

*United States Court of Appeals  
for the  
District of Columbia Circuit*



**TRANSCRIPT OF  
RECORD**



392

APPENDIX

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24, 450

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Municipal Light Boards of  
Reading and Wakefield, Massachusetts,  
United States Court of Appeals  
for the District of Columbia Circuit  
Petitioners,

FILED NOV 16 1970

v.

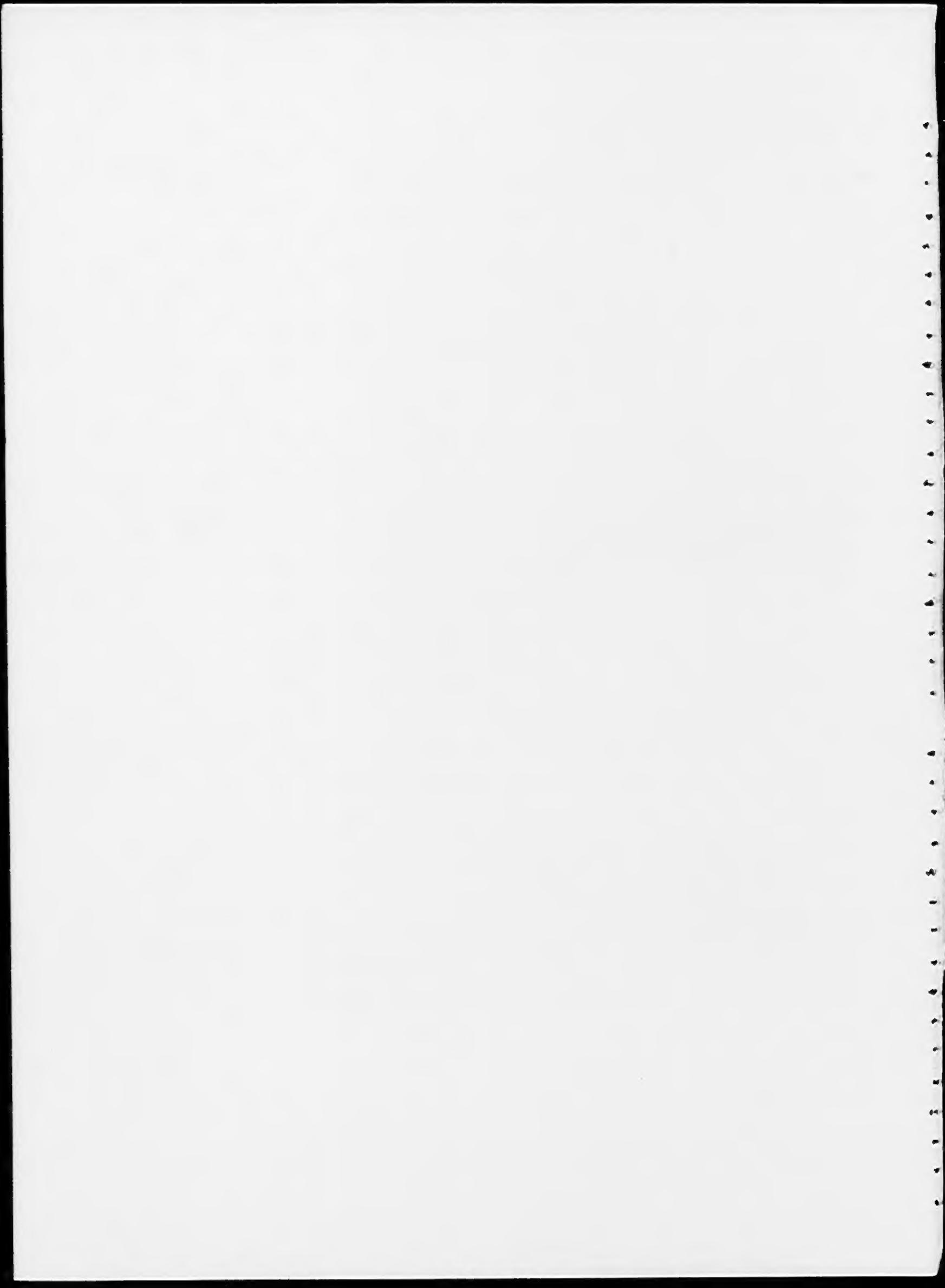
Nathan J. Paulson  
*Nathan J. Paulson*  
CLERK  
Federal Power Commission,

Respondent.

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ON PETITION FOR REVIEW OF AN ORDER OF  
THE FEDERAL POWER COMMISSION

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**APPENDIX**

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Municipal Light Boards of  
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ON PETITION FOR REVIEW OF AN ORDER OF  
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APPENDIX

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BOSTON EDISON COMPANY  
EXECUTIVE OFFICES  
800 BOYLETON STREET  
BOSTON, MASSACHUSETTS 02199

RALPH M. KELMON  
ASSISTANT TREASURER

January 29, 1970

Mr. Gordon M. Grant  
Secretary  
Federal Power Commission  
Washington, D. C. 20426

Dear Sir:

Boston Edison Company hereby submits for filing its rate schedule GENERAL SERVICE FOR RESALE, consisting of

Fronting Page  
Ex. A - General Terms and Conditions  
Ex. B - Rate for All Requirements Service,  
Rate S-1  
Ex. C - Definition and Special Conditions of  
All Requirements Service,

to supersede Wholesale Electric Utility Rate M, as amended (F.P.C. Nos. 3, 10, 13, 14, 15, 16 and 17) and to supersede our submission of High-Tension Wholesale Municipal Utility Rate N-1, General Terms and Conditions for Sales for Resale, Miscellaneous Charges Nos. 1 and 2, submitted for filing March 11, 1968 upon withdrawal of the Rate N submittal of December 21, 1967.

The Company proposes to make this rate schedule, GENERAL SERVICE FOR RESALE, effective April 1, 1970. Copies of this letter, the new rate schedule and comparative billing data have been mailed to all the customers to whom the rate will apply:

Boston Gas Company

Philip R. Tanner, Manager  
Electric Department  
25 West Street  
Charlestown, Massachusetts

New England Power Company

Nicholas G. Hodgman, Vice President  
New England Power Company  
Turnpike Road  
Westboro, Massachusetts

Mr. Gordon M. Grant

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Town of Concord

Russell I. Eldridge, Superintendent  
Concord Municipal Light Department  
Keyes Road  
Concord, Massachusetts

Town of Norwood

William J. Kates, Superintendent  
Norwood Municipal Light Department  
206 Central Street  
Norwood, Massachusetts

Town of Reading

Kenneth E. Gaw, Manager  
Reading Municipal Light Department  
25 Haven Street  
Reading, Massachusetts

Town of Wakefield

Michael F. Collins, Manager  
Wakefield Municipal Light Department  
9 Albion Street  
Wakefield, Massachusetts

Town of Wellesley

Everett R. Kennedy, Superintendent  
Public Works Department  
Wellesley Hills, Massachusetts

In addition, the Company submits a Statement of Cost of Service -- 1968 showing its cost of the service to be supplied under the new rate schedule, with requisite supporting data, and Statements Comparing Sales and Revenues under the new rate schedule with the old. The comparisons are on the basis of the service now being received by the customers. All the municipal customers and Boston Gas Company are presently served at low-tension. New England Power Company is served at both low and high-tension. Preparations are being actively made for a changeover from low to high-tension service to Norwood and Reading, but it is not presently known just when or under what circumstances the changeover will occur.

There are no other rates of this Company applicable to similar wholesale sales for resale so no comparison can be made with such rates, and there were no facilities installed or modified in order to supply the service initially under the new rate schedule.

Mr. Gordon M. Grant

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1/29/70

The continuing inflation of costs has made it necessary to increase the charges under both Rate M and the earlier proposed Rate N-1. Rate M provides no discount for high-tension service and Rate N-1 was to be a high-tension rate restricted to municipal customers. The new rate provides charges for both low and high-tension services and is applicable to both electric utilities and municipal electric departments. The demand determination has been changed from a kW basis to a kVA basis over a 60-minute period. The kVA basis has been adopted to encourage improvements in system power factors.

The new rate schedule is designed to distribute the Company's costs of service more equitably between resale customers and ultimate consumers and to provide revenues commensurate with the Company's requirements and responsibilities.

Although Rate S-1, had it been in effect in 1968, would have increased revenue by \$2,105,215, or by 14.14%, even with this increase the rate would have returned only 6.74% of rate base. (This figure is after normalization of the tax effect of accelerated depreciation, a method followed on the Company's basic books of account and approved by Congress in the Tax Reform Act of 1969.) See Cost of Service Study, Statement N, Table 1. While the return expected under Rate S-1, after it goes into effect, will certainly be more equitable to Edison investors than the 4.4% return (normalized) actually realized in 1968 under Rate M, the new rate level will still be below that to which the Company believes it is entitled. See Cost of Service Study, Statement N, Table 2; Statement M, Table 1.

The new rate schedule is also designed to eliminate, to the extent possible, objections to certain features of the Rate N-1 submittal raised by customers who have filed formal complaints against the Company. The new rate schedule provides provisions for interim 14 kV service during periods of changeover to 115 kV, the assumption of 115 kV line extension costs by the Company under certain conditions, a fuel adjustment clause, a demand charge for a fixed block of 10,000 kVA with a lower charge for demands in excess of this amount, provision for the installation of peaking capacity by the customer, and modified notice requirements.

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Mr. Gordon M. Grant

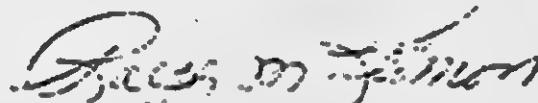
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1/29/70

The Company also submits a form of Contract for GENERAL SERVICE FOR RESALE, in substance the same as the rate schedule. This submission is made in an effort to conform to the Commission's request contained in Section 2.8 of the Regulations, as amended by Order No. 347 of May 15, 1967. The contract form affords a ready vehicle for customers disposed to contract with the Company to provide in the contract for any special problems their situation presents. No agreement by any customers to the contract form or the rate schedule, or to the filing thereof, has been obtained.

The Company requests that the rate schedule be accepted for filing to become effective on April 1, 1970.

Very truly yours,



Ralph M. Kelmon  
Assistant Treasurer

Boston Edison Company  
800 Boylston Street, Boston

**GENERAL SERVICE FOR RESALE\***

The above service is available on the basis of the rate schedule filed herewith and set forth in Exhibits A, B, and C.

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\* Superseding Wholesale Electric Utility Rate M, as amended (F.P.C. Nos. 3, 10, 13, 14, 15, 16, 17) and High Tension Wholesale Municipal Utility Rate N-1 (submitted for filing March 11, 1968 upon withdrawal of the Rate N supplemental of December 21, 1967) together with schedules of General Terms and Conditions and Miscellaneous Charges applicable thereto.

BOSTON EDISON COMPANY  
GENERAL SERVICE FOR RESALE  
GENERAL TERMS AND CONDITIONS

A. Amendments

The Company shall have the right at any time to amend these General Terms and Conditions and all other exhibits to this rate schedule by furnishing an appropriate statement of such amendment to Customer and filing the same with the Federal Power Commission (or such other regulatory agency as may have jurisdiction in the premises).

B. Rights-of-Way and Permits

The obligations of the Company and Customer are subject to and conditioned upon their securing and retaining all rights-of-way, franchises, locations, permits and other rights and approvals necessary in order to permit service to be rendered under this rate schedule, and each party agrees to use its best efforts to secure and retain all such rights-of-way, franchises and other rights and approvals.

C. Availability of General Service for Resale

Except as may be otherwise agreed, General Service for Resale is only available to electric utilities and municipal electric departments for the purchase of electricity

C. Availability of General Service for Resale (Continued)  
supplied in bulk by the Company for the Customer's own use  
and for resale by the Customer to ultimate consumers located  
within the area served by the Customer. A Customer wishing  
to sell electricity in bulk for resale shall give the Company  
notice in writing of its intention so to do and shall furnish  
the Company such information relative to the proposed sale  
for resale as the Company may require; whereupon the Company  
shall, as soon as is practicable after receipt of such notice,  
advise the Customer of its ability to supply such electricity  
and of the applicable rate schedule or its best estimate of  
charges for such service.

D. Character of Service

Electricity will be supplied in the form of three-phase, sixty-cycle alternating current. Delivery voltage will be at 115,000 volts nominal for high-tension service and 14,000 or 24,000 volts nominal for low-tension service. Except as may be mutually agreed between the Company and the Customer, or during a reasonable period of changeover to high-tension service, service will be supplied at either high-tension or low-tension but not at both. The Customer and the Company will

**D. Character of Service (Continued)**

cooperate in planning the timing of the changeover from low-tension to high-tension service, in order that the changeover may be accomplished as soon as is practicable. Areas served by high-tension service and areas served by low-tension service shall be operated by the Customer in such a manner as not to affect the Company's system adversely.

**E. Interruption of Service**

The Company shall not be responsible for any failure to supply electric service, nor for interruption, reversal or abnormal voltage of the supply, if such failure, interruption, reversal or abnormal voltage is without wilful default on its part. Whenever the integrity of the Company's system or the supply of electricity is threatened by conditions on its system or on the systems with which it is directly or indirectly interconnected, or whenever it is necessary or desirable to aid in the restoration of service, the Company may, in its sole judgment, curtail or interrupt electric service or reduce voltage to some or all of its Customers and such curtailment, interruption or reduction shall not constitute wilful default by the Company.

**F. Delivery and Ownership of Facilities**

1. All deliveries will be made normally at a single delivery point at the town line of the Customer's territory, where the electric power will be transferred to transmission or distribution lines owned by the Customer; provided, however, that by special agreement between Company and Customer, provision may be made for additional delivery points, utilization of Company-owned facilities in the Customer's territory, and special charges relating thereto.

2. All lines, apparatus and other equipment up to the point of delivery shall be provided, maintained and operated by the Company. The Customer shall provide without cost to the Company a suitable place for the installation of any of the Company's apparatus or other equipment which it is proper to locate on the Customer's property. The Customer shall be responsible for all damage to, or loss of, the Company's property located upon his premises unless occasioned by circumstances beyond the Customer's control. All equipment furnished by the Company shall remain its property, and the Customer shall give the Company permission to enter its premises at all reasonable times for the purpose of installing, inspecting, testing and maintaining its equipment.

F. Delivery and Ownership of Facilities (Continued)

3. Lines, apparatus and other equipment as may be necessary in order to utilize the services which are provided, maintained or operated by the Customer, shall conform to the requirements of the Company in force from time to time, and shall be subject to reasonable inspection and approval by the Company. The Company's requirements will be furnished on request.

The Customer assumes all responsibility for electric service beyond the point of delivery, and the Company shall not be liable for damage to the person or property of the Customer or its employees or of any other persons resulting from electric service beyond the point of delivery.

G. Metering Equipment

1. The Company reserves the right to determine the metering installation and will supply the metering equipment for determining the quantity and conditions of supply of electricity delivered hereunder. The Customer shall supply without cost to the Company a suitable place for the installation of the Company's metering equipment.

2. If at any time such equipment shall be found to be inaccurate by more than 2% up or down the Company shall

**G. Metering Equipment (Continued)**

make it accurate and the charges and meter readings for the period of inaccuracy, so far as the same can reasonably be ascertained, shall be adjusted. However, no adjustment prior to the beginning of the next preceding month shall be made except by mutual agreement. In addition to regular routine tests, the Company shall have any such meter tested at any time upon written request of the Customer, and if such meter prove accurate within 2% up or down the expense of the test shall be borne by the Customer.

3. Electricity supplied under this rate at 115,000 volts, if metered on the secondary side of the Customer's 115,000-volt transformers, will be compensated for transformer losses and line losses from the point of delivery.

**H. 115,000 Volt Line Extension**

1. Upon receipt of a request by a Customer for service at 115,000 volts, the Company, after a joint study with the Customer, will determine the date when overall economic considerations justify supplying such service. If the Customer wishes to take such service prior to such date, and compliance with the Customer's request will cause losses to the Company or its other Customers not reasonably warranted by overall

H. 115,000 Volt Line Extension (Continued)

economic advantages, due in whole or in part to the premature retirement or temporary unloading of 14,000 or 24,000-volt facilities no longer needed to serve the Customer, and if the Company provides such service in advance of the date so determined, the Customer will pay an additional charge at the rate of 15% per year of the original cost of such facilities until said date. Should some of such facilities become useful to the Company prior to said date, a pro rata portion of the charge, properly allocable thereto, shall thereafter be excused. Total payments shall not exceed the unamortized cost of such facilities at the time of changeover to 115,000-volt service.

2. Upon acceptance by the Company of a Customer's request for 115,000-volt electric service, the Company will extend its 115,000-volt lines to the boundary line of the territory served by the Customer. The Customer will then, after completion of the line and upon receipt of the Company's invoice, make a lump sum payment to the Company of the amount, if any, by which the cost of said line exceeds \$5.00 per kVA of the Customer's previous maximum sixty-minute demand. The Company will refund this money to the Customer in January of each year at a rate of \$5.00 per kVA of increased maximum

H. 115,000 Volt Line Extension (Continued)

sixty-minute kVA demand purchased from the Company in each calendar year over that of the previous calendar year until the entire amount paid by the Customer is refunded.

I. Billings and Payment

1. All meters shall be read and bills rendered monthly. If the Company is unable to obtain the reading of a meter, it may estimate the reading.
2. All bills shall be due and payable upon presentation. In the event of a dispute as to the amount of any bill, the Customer will pay to the Company the amount billed and upon settlement of the dispute appropriate billing adjustments will be made.
3. When all or part of any bill shall remain unpaid for more than thirty (30) days after the rendering thereof by the Company, simple interest at the rate of 1% per month shall accrue to the Company from and after the thirtieth day from the rendering of said bill and be payable to the Company on either: (1) such unpaid amount, or (2) in the event the amount of the bill is disputed, the amount finally determined to be due and payable.

J. Notices

Notices under this rate schedule shall be in writing,  
and shall be delivered or mailed to the Company or Customer at  
their respective addresses.

BOSTON EDISON COMPANY  
GENERAL SERVICE FOR RESALE

DEFINITION AND SPECIAL CONDITIONS  
OF ALL REQUIREMENTS SERVICE

**A. Obligations of the Parties**

The Customer by commencing to take all of its requirements of electricity from the Company, agrees to take and pay for, and the Company by commencing to supply such service agrees to supply all of the Customer's requirements of electricity (except as provided in paragraph B hereof and subject to the provisions of paragraph C of Exhibit A) under this rate schedule as the same may be in effect from time to time subject to action of the regulatory commission having jurisdiction. Either party may terminate such service by giving five (5) years' notice in writing, or other notice reasonable in the circumstances as the Company and the Customer may agree. Prior to the first day of September of each year, the Customer shall furnish to the Company a forecast of its summer and winter peak loads for each of the following five (5) years.

**B. Peaking Unit Exception**

The Customer may continue to receive service under this rate schedule for all requirements service if, after reasonable

B. Peaking Unit Exception (Continued)

notice to the Company (no less than two (2) years), it installs peaking generating capacity on its system of no more than 20% of its annual peak load in the year of installation.

C. Availability of Partial Requirements Service

Upon reasonable notice by the Customer of its intention to install its own generating equipment (other than as specified in paragraph B hereof) or to purchase electricity from other sources, the Company will make available to the Customer as soon as practicable a rate for General Service for Resale - Partial Requirements Service, or its best estimate of charges for such service. Said notice shall specify the amount of capacity to be purchased or installed and the planned date of the purchase or of initial operation of the equipment to be installed. Unless otherwise agreed, reasonable notice shall be understood to mean five (5) years if the Customer plans to purchase capacity or install capacity in excess of that specified in B above.

D. Costs Incurred in Reliance on Notice

In the event that the Customer, having given the Company the notice called for in paragraphs B or C above, continues after the date specified in the notice to call upon the Company for the

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D. Costs Incurred in Reliance on Notice (Continued)

capacity and energy as to which notice was given, the Company will exert its best efforts to supply such capacity and energy and the Customer shall pay the Company, in addition to the charges under the applicable rate, any extraordinary costs incurred by the Company in making available such capacity and energy. The Customer shall have six (6) months after receipt of the rates or estimate referred to in paragraph C above to withdraw its notice without being liable for any charge for such extraordinary costs.

E. Amendment

This Exhibit is subject to amendment by the Company as set forth in Exhibit A.

Application to Boston Edison Company for  
115,000 Volt Service

Date \_\_\_\_\_

The following Customer hereby requests Boston Edison Company (1) to extend its 115,000 volt lines to the \_\_\_\_\_ town line at a point to be mutually agreed upon by the two parties and (2) upon completion of construction of the necessary 115,000 volt facilities by both parties, to supply all the Customer's requirements for electric service under the Company's rate schedule for General Service for Resale as the same may be in effect from time to time subject to action of the regulatory commission having jurisdiction; provided however that the making of this application shall not foreclose the applicant from taking advantage of any other lower rate of the Company that may be promulgated from time to time for like conditions of service.

(Name of Customer)

By \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Accepted by Boston Edison Company

By \_\_\_\_\_

R 300 Original Sheet No. 1

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Filing Public Utility: BOSTON EDISON COMPANY

Customer Receiving Service:

Service to be Rendered: GENERAL SERVICE FOR RESALE

BOSTON EDISON COMPANYCONTRACT FORGENERAL SERVICE FOR RESALE

Dated:

Parties: Boston Edison Company  
800 Boylston Street  
Boston, Massachusetts 02199  
(The "Company")

and

(The "Customer")

1. Scope of Contract - The Company agrees to supply and the Customer agrees to take and pay for the Customer's requirements of electricity for resale on the terms set forth in the following attached Exhibits:

- A. General Terms and Conditions
- B. Rate for All Requirements Service -  
Rate S-1.
- C. Definition and Special Conditions for  
All Requirements Service.
- D. Special Provisions Relating to Customer.

2. Term of Service - Unless otherwise duly ordered by any regulatory agency having jurisdiction, service under this contract shall commence on \_\_\_\_\_, 19\_\_\_\_ and either party may terminate this contract by giving five (5) years' notice in writing, or other notice reasonable in the circumstances as the parties may agree.

3. Definition of Contract - As used in this contract and all exhibits hereto, the words "the contract" or "this contract" shall mean this contract and all exhibits hereto.

4. Prior Agreements - As of the date of commencement of service hereunder, this contract shall supersede and cancel all rate schedules (including contracts) previously applicable to the service contracted for.

5. Addresses - The address of the Company to be used for notices and the like is 800 Boylston Street, Boston, Massachusetts 02199. The address of the Customer is \_\_\_\_\_.

6. Successors - This contract shall enure to the benefit of, and shall bind, the successors of the parties hereto but shall not be assignable.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective authorized officials.

\_\_\_\_\_  
(Customer)

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Title(s):

BOSTON EDISON COMPANY

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

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BOSTON EDISON COMPANY  
GENERAL SERVICE FOR RESALE  
GENERAL TERMS AND CONDITIONS

**A. Amendments**

The Company shall have the right at any time to amend these General Terms and Conditions and all other exhibits to the contract by furnishing an appropriate statement of such amendment to the Customer and filing the same with the Federal Power Commission (or such other regulatory agency as may have jurisdiction in the premises).

**B. Rights-of-Way and Permits**

The obligations of the Company and Customer are subject to and conditioned upon their securing and retaining all rights-of-way, franchises, locations, permits and other rights and approvals necessary in order to permit service to be rendered as set forth in the contract, and each party agrees to use its best efforts to secure and retain all such rights-of-way, franchises and other rights and approvals.

**C. Availability of General Service for Resale**

Except as may be otherwise agreed, General Service for Resale is only available to electric utilities and municipal electric departments for the purchase of electricity

C. Availability of General Service for Resale (Continued)  
supplied in bulk by the Company for the Customer's own use  
and for resale by the Customer to ultimate consumers located  
within the area served by the Customer. A Customer wishing  
to sell electricity in bulk for resale shall give the Company  
notice in writing of its intention so to do and shall furnish  
the Company such information relative to the proposed sale  
for resale as the Company may require; whereupon the Company  
shall, as soon as is practicable after receipt of such notice,  
advise the Customer of its ability to supply such electricity  
and of the applicable rate schedule or its best estimate of  
charges for such service.

D. Character of Service

Electricity will be supplied in the form of three-phase, sixty-cycle alternating current. Delivery voltage will be at 115,000 volts nominal for high-tension service and 14,000 or 24,000 volts nominal for low-tension service. Except as provided in Exhibit D or during a reasonable period of changeover to high-tension service, service will be supplied at either high-tension or low-tension but not at both. The Customer and the Company will cooperate in planning the

D. Character of Service (Continued)

timing of the changeover from low-tension to high-tension service, in order that the changeover may be accomplished as soon as is practicable. Areas served by high-tension service and areas served by low-tension service shall be operated by the Customer in such a manner as not to affect the Company's system adversely.

E. Interruption of Service

The Company shall not be responsible for any failure to supply electric service, nor for interruption, reversal or abnormal voltage of the supply, if such failure, interruption, reversal or abnormal voltage is without wilful default on its part. Whenever the integrity of the Company's system or the supply of electricity is threatened by conditions on its system or on the systems with which it is directly or indirectly interconnected, or whenever it is necessary or desirable to aid in the restoration of service, the Company, may, in its sole judgment, curtail or interrupt electric service or reduce voltage to the Customer and such curtailment, interruption or reduction shall not constitute wilful default by the Company.

F. Delivery and Ownership of Facilities

1. All deliveries will be made normally at a single delivery point at the town line of the Customer's territory, where the electric power will be transferred to transmission or distribution lines owned by the Customer; provided, however, that Exhibit D may contain provisions as to additional delivery points, utilization of Company-owned facilities in the Customer's territory, and special charges relating thereto.

2. All lines, apparatus and other equipment up to the point of delivery shall be provided, maintained and operated by the Company. The Customer shall provide without cost to the Company a suitable place for the installation of any of the Company's apparatus or other equipment which it is proper to locate on the Customer's property. The Customer shall be responsible for all damage to, or loss of, the Company's property located upon his premises unless occasioned by circumstances beyond the Customer's control. All equipment furnished by the Company shall remain its property, and the Customer shall give the Company permission to enter its premises at all reasonable times for the purpose of installing, inspecting, testing and maintaining its equipment.

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**F. Delivery and Ownership of Facilities (Continued)**

3. Lines, apparatus and other equipment as may be necessary in order to utilize the services which are provided, maintained or operated by the Customer, shall conform to the requirements of the Company in force from time to time, and shall be subject to reasonable inspection and approval by the Company. The Company's requirements will be furnished on request.

The Customer assumes all responsibility for electric service beyond the point of delivery, and the Company shall not be liable for damage to the person or property of the Customer or its employees or of any other persons resulting from electric service beyond the point of delivery.

**G. Metering Equipment**

1. The Company reserves the right to determine the metering installation and will supply the metering equipment for determining the quantity and conditions of supply of electricity delivered hereunder. The Customer shall supply without cost to the Company a suitable place for the installation of the Company's metering equipment.

#### G. Metering Equipment (Continued)

2. If at any time such equipment shall be found to be inaccurate by more than 2% up or down, the Company shall make it accurate and the charges and meter readings for the period of inaccuracy, so far as the same can reasonably be ascertained, shall be adjusted. However, no adjustment prior to the beginning of the next preceding month shall be made except by mutual agreement. In addition to regular routine tests, the Company shall have any such meter tested at any time upon written request of the Customer, and if such meter prove accurate within 2% up or down the expense of the test shall be borne by the Customer.

3. Electricity supplied under this rate at 115,000 volts, if metered on the secondary side of the Customer's 115,000-volt transformers, will be compensated for transformer losses and line losses from the point of delivery.

#### H. 115,000 Volt Line Extension

1. Upon receipt of a request by a Customer for service at 115,000 volts, the Company, after a joint study with the Customer, will determine the date when overall economic considerations justify supplying such service. If the Customer

L310

H. 115,000 Volt Line Extension (Continued)

wishes to take such service prior to such date, and compliance with the Customer's request will cause losses to the Company or its other Customers not reasonably warranted by overall economic advantages, due in whole or in part to the premature retirement or temporary unloading of 14,000 or 24,000-volt facilities no longer needed to serve the Customer, and if the Company provides such service in advance of the date so determined, the Customer will pay an additional charge at the rate of 15% per year of the original cost of such facilities until said date. Should some of such facilities become useful to the Company prior to said date, a pro rata portion of the charge, properly allocable thereto, shall thereafter be excused. Total payments shall not exceed the unamortized cost of such facilities at the time of changeover to 115,000-volt service.

2. Upon acceptance by the Company of a Customer's request for 115,000-volt electric service, the Company will extend its 115,000-volt lines to the boundary line of the territory served by the Customer. The Customer will then, after completion of the line and upon receipt of the Company's invoice, make a lump sum payment to the Company of the amount,

*R311*

H. 115,000 Volt Line Extension (Continued)

if any, by which the cost of said line exceeds \$5.00 per kVA of the Customer's previous maximum sixty-minute demand. The Company will refund this money to the Customer in January of each year at a rate of \$5.00 per kVA of increased maximum sixty-minute kVA demand purchased from the Company in each calendar year over that of the previous calendar year until the entire amount paid by the Customer is refunded.

I. Billings and Payment

1. All meters shall be read and bills rendered monthly. If the Company is unable to obtain a reading of a meter, it may estimate the reading.

2. All bills shall be due and payable upon presentation. In the event of a dispute as to the amount of any bill, the Customer will pay to the Company the amount billed and upon settlement of the dispute appropriate billing adjustments will be made.

3. When all or part of any bill shall remain unpaid for more than thirty (30) days after the rendering thereof by the Company, simple interest at the rate of 1% per month shall accrue to the Company from and after the thirtieth day from the rendering of said bill and be payable to the Company on

either: (1) such unpaid amount, or (2) in the event the amount of the bill is disputed, the amount finally determined to be due and payable.

J. Notices

Notices under the contract shall be in writing and shall be delivered or mailed to the parties at their respective addresses as set forth in the contract. Either party may change its address under Article by written notice to the other.

BOSTON EDISON COMPANY  
GENERAL SERVICE FOR RESALE  
RATE FOR ALL REQUIREMENTS SERVICE  
RATE S-1

Applicability

This rate is applicable only to all requirements service as defined in Exhibit C.

Basic Rate (per month)

Demand Charge	\$2.25 per kVA for first 10,000 kVA of billing demand. \$1.95 per kVA for excess.
Energy Charge	7.0 mills per kWh for the first 250 kWh per kVA of billing demand. 5.4 mills per kWh for the excess.

Fuel Adjustment Clause

Whenever in any month, the cost of fossil fuels priced alongside the Company's electric generating stations is greater or less than 28.00 cents per million btu, an additional charge or deduction will be applied to the kilowatt-hours which are billed in the second succeeding billing month.

This adjustment will be determined by multiplying the increase or decrease from 28.00 cents per million btu in the month by 0.011 and by the ratio of kilowatthours generated by fossil fuels to total kilowatthours generated and purchased in that month.

Basic Rate (per month)  
(Continued)Determination of  
• Billing Demand

The billing demand will be the highest 60-minute kVA demand on the Company in the month but not less than 80 percent of the highest 60-minute kVA demand in the previous eleven months.

Applicable Rates

(1) 115 kV Service - except as set forth in (3) below.

Basic Rate.

(2) 14 and 24 kV Service

Basic Rate, plus additional charge of \$0.70 per kVA of maximum 60-minute kVA demand in the current or preceding eleven months.

(3) Interim 115 kV Service - Service when the Company is required, during a period of changeover to 115 kV service, to relay the 115 kV service with 14 kV (or 24 kV) Company facilities or vice versa.

Basic Rate, plus the additional charge set forth in (2) above.

(4) 4 kV Transformation Charge

\$0.45 per kVA of maximum 60-minute kVA demand in the current or preceding eleven months for transformation of voltage from 14 kV to 4 kV.

Normal Billing

Except during period of changeover to 115 kV service, separate bills will be rendered for:

- (1) Service at 115,000 volts
- (2) Service at 14,000 volts and 24,000 volts.

Billing During Period of  
Changeover to 115 kV Service

During the period of changeover from 14 or 24 kV to 115 kV service, the kVA demands of both the 14 and 24 and 115 kV loads will be measured by a totalizing meter. The demand charge for 115 kV service will apply to the totalized demand, and the additional charge of 70 cents per kVA will be applied to demands at 14 and 24 kV but to not less than 25% of the totalized demand. If 14 or 24 kV load is shifted to 115 kV during the month, the average of the maximum 14 and 24 kV demands before and after the changeover will be used.

Amendment

This Exhibit is subject to amendment by the Company as set forth in Exhibit A.

R 316

BOSTON EDISON COMPANY  
GENERAL SERVICE FOR RESALE

DEFINITION AND SPECIAL CONDITIONS  
OF ALL REQUIREMENTS SERVICE

**A. Obligations of the Parties**

The Customer agrees to take and pay for and the Company agrees to supply all of the Customer's requirements of electricity (except as provided in paragraph B hereof and subject to the provisions of paragraph C of Exhibit A) under this contract as the same may be in effect from time to time subject to action of the regulatory commission having jurisdiction. Either party may terminate such service by giving five (5) years' notice in writing, or other notice reasonable in the circumstances as the Company and the Customer may agree. Prior to the first day of September of each year, the Customer shall furnish to the Company a forecast of its summer and winter peak loads for each of the following five (5) years.

**B. Peaking Unit Exception**

The Customer may continue to receive service under this contract for all requirements service if, after reasonable

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**B. Peaking Unit Exception (Continued)**

notice to the Company (no less than two (2) years), it installs peaking generating capacity on its system of no more than 20% of its annual peak load in the year of installation.

**C. Availability of Partial Requirements Service**

Upon reasonable notice by the Customer of its intention to install its own generating equipment (other than as specified in paragraph B hereof) or to purchase electricity from other sources, the Company will make available to the Customer as soon as practicable a rate for General Service for Resale - Partial Requirements Service, or its best estimate of charges for such service. Said notice shall specify the amount of capacity to be purchased or installed and the planned date of the purchase or of initial operation of the equipment to be installed. Unless otherwise agreed, reasonable notice shall be understood to mean five (5) years if the Customer plans to purchase capacity or install capacity in excess of that specified in B above.

**D. Costs Incurred in Reliance on Notice**

In the event that the Customer, having given the Company the notice called for in paragraphs B or C above, continues after the date specified in the notice to call upon the Company for the

D. Costs Incurred in Reliance on Notice (Continued)

capacity and energy as to which notice was given, the Company will exert its best efforts to supply such capacity and energy and the Customer shall pay the Company, in addition to the charges under the applicable rate, any extraordinary costs incurred by the Company in making available such capacity and energy. The Customer shall have six (6) months after receipt of the rates or estimate referred to in paragraph C above to withdraw its notice without being liable for any charge for such extraordinary costs.

E. Amendment

This Exhibit is subject to amendment by the Company as set forth in Exhibit A.

R 743

BOSTON EDISON COMPANY

STATEMENT OF COST OF SERVICE - 1968

RE: GENERAL SERVICE FOR RESALE

(Pursuant to Section 35.13 b(4) of Regulations  
Under Federal Power Act)

R 751

## BOSTON EDISON COMPANY

Electric Plant in Service

Line No.	Title of Account Col. A	Acc't.	As of December 31	
		No.	1967	1968
		Col. B	Col. C -0-	Col. D -0-
1.	INTANGIBLE PLANT			
2.	PRODUCTION PLANT			
3.	STEAM PRODUCTION PLANT			
4.	Land and land rights	310	\$ 1,943,581	\$ 1,943,582
5.	Structures and improvements	311	59,840,426	58,398,375
6.	Boiler plant equipment	312	103,208,759	91,468,680
7.	Eng's and eng. driven generators	313	-0-	-0-
8.	Turbogenerator units	314	69,476,609	66,601,913
9.	Accessory electric equipment	315	28,914,196	29,018,496
10.	Misc. power plant equipment	316	1,287,505	1,333,345
11.	Total steam production plant		<u>264,671,076</u>	<u>248,764,391</u>
12.	NUCLEAR PRODUCTION PLANT			
13.	Land and land rights	320	-0-	712,855
14.	Total nuclear production plant		-0-	712,855
15.	HYDRAULIC PRODUCTION PLANT		-0-	-0-
16.	OTHER PRODUCTION PLANT			
17.	Land and land rights	340	-0-	-0-
18.	Structures and improvements	341	3,718	3,718
19.	Fuel holders, prod., and access'rs	342	16,075	16,075
20.	Prime movers	343	1,052,591	1,052,591
21.	Generators	344	341,299	341,299
22.	Accessory electric equipment	345	188,943	188,943
23.	Misc. power plant equipment	346	2,729	2,729
24.	Total other prod. plant		<u>1,605,355</u>	<u>1,605,355</u>
25.	Total production plant		<u>266,276,431</u>	<u>251,082,601</u>
26.	TRANSMISSION PLANT			
27.	Land and land rights	350	3,876,183	3,897,407
28.	Structures and improvements	352	2,503,161	3,018,900
29.	Station equipment	353	35,882,492	41,365,358
30.	Towers and fixtures	354	4,379,333	7,714,260
31.	Poles and fixtures	355	2,300,047	3,134,556
32.	Overhead conductors and devices	356	3,073,536	4,174,789
33.	Underground conduit	357	1,114,514	1,302,216
34.	Underground conductors and dev.	358	26,727,722	28,849,464
35.	Roads and trails	359	225,165	225,165
36.	Total transmission plant		<u>80,082,153</u>	<u>93,682,115</u>
37.	DISTRIBUTION PLANT			
38.	Land and land rights	360	1,804,506	1,794,708
39.	Structures and improvements	361	9,537,529	9,760,734
40.	Station equipment	362	45,670,476	47,522,716
41.	Storage battery equipment	363	163,519	-0-
42.	Poles, towers, and fixtures	364	17,081,013	17,930,228
43.	Overhead conductors and devices	365	23,196,514	25,406,607

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## BOSTON EDISON COMPANY

Electric Plant in Service

Line No.	Title of Account Col. A	As of December 31		
		Acc't. No.	1967 Col. B	1968 Col. C
		Col. D	Col. B	Col. C
44.	Underground conduit	366	\$ 30,375,445	\$ 31,162,762
45.	Underground conductors and dev.	367	64,955,160	66,935,353
46.	Line transformers	368	26,959,132	29,363,526
47.	Services	369	19,468,039	20,307,307
48.	Meters	370	13,187,686	13,713,723
49.	Installations on cust. premises	371	-0-	-0-
50.	Leased property on cust. premises	372	-0-	-0-
51.	Street light and signal systems	373	22,429,258	23,070,711
52.	Total distribution plant		<u>274,828,277</u>	<u>286,968,375</u>
53.	GENERAL PLANT			
54.	Land and land rights	389	684,254	684,254
55.	Structures and improvements	390	6,138,021	6,378,974
56.	Office furniture and equipment	391	2,847,620	2,911,863
57.	Transportation equipment	392	5,925	8,102
58.	Stores equipment	393	362,298	372,757
59.	Tools, shop and garage equipment	394	772,584	826,366
60.	Laboratory equipment	395	441,008	463,433
61.	Power operated equipment	396	-0-	-0-
62.	Communication equipment	397	942,554	918,438
63.	Miscellaneous equipment	398	224,463	239,088
64.	Subtotal		<u>12,418,727</u>	<u>12,803,275</u>
65.	Other tangible property	399	<u>-0-</u>	<u>-0-</u>
66.	Total general plant		<u>12,418,727</u>	<u>12,803,275</u>
67.	Total (Accounts 101 and 106)		<u>633,605,588</u>	<u>644,536,366</u>
68.	Electric plant purchased	102	-0-	-0-
69.	Electric plant sold	102	-0-	-0-
70.	Electric plant in process of reclass	103	-0-	-0-
71.	Total electric plant in service		<u>633,605,588</u>	<u>644,536,366</u>
72.	CONSTRUCTION WORK IN PROGRESS - ELECTRIC			
73.	Production plant	107	8,656,184	35,386,263
74.	Transmission plant	107	12,544,882	7,519,482
75.	Distribution plant	107	13,068,454	19,782,253
76.	General plant	107	209,999	297,261
77.	Total construction work in progress - electric		<u>34,489,519</u>	<u>62,985,259</u>
78.	Total		<u>668,095,107</u>	<u>707,521,625</u>
79.	Steam Heating Service Plant in Service		<u>15,807,646</u>	<u>19,171,194</u>
80.	Construction Work in Progress - Steam		<u>1,403,160</u>	<u>1,172,579</u>
81.	Total		<u>17,210,806</u>	<u>20,343,773</u>
82.	Total Utility Plant		<u>\$685,305,913</u>	<u>\$727,865,398</u>

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## BOSTON EDISON COMPANY

Accumulated Depreciation

Line No.	Col. A	As of		
		December 31 1967 Col. B	1968 Col. C	June 30 1969 Col. D
1.	Balance (+)	\$209,141,463	\$205,897,009	\$212,094,13

+ Applicable to all depreciable property, no breakdown between various kinds of property has been made on the books of the Company.

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BOSTON EDISON COMPANY

Depreciation Expense

Col. A	1968
	Col. B
Charged to Expense (+)	<u>\$19,419,702</u>

(+) Applicable to all depreciable property, no breakdown between various kinds of property has been made on the books of the Company.

The reserve for depreciation is credited with amounts computed on a straight-line basis to provide for retirement of property units no longer used or useful in the company's business. Such amounts are believed by the management, based on past experience, to be sufficient to meet write-offs of the cost of property at the end of its useful life. At the time of retirement of property units, the book cost thereof and the cost of removal are charged and salvage is credited to depreciation reserve account.

During 1968, the provision for depreciation was sufficient to cover retirements charged to the reserve and also to increase the balance in the depreciation reserve account. This provision was approximately 3% of cost of depreciable property averaged as at the beginning and end of the year.

The Company charges to maintenance expense accounts as incurred the costs of current repairs, replacements of items which are not accounted for as units of property and minor betterments of plants and properties.

R.769

Line No.	Col. A	Total M Adjusted	Other Utilities ex. Rate M	Territorial Load	Rate M			Ultimate Grossmargin Col. 1	Basic of Allocation Col. J
					Col. B	Col. C	Col. D		
1. Average Rate Base									
2. Electric Plant in Service	\$125,842,463	\$125,071,612	\$129,670,851	\$129,676,493	\$129,700,700	\$16,369,283	\$15,746,950	\$551,022,901	Table 2
3. Less reserve for depreciation	129,695,193	121,612,200	127,396,267	129,514,920	127,632,921	12,032,921	12,226,296	119,169,367	Factor 5
4. Plant less depreciation	125,677,200	123,457,912	125,314,588	126,147,353	126,041,805	120,350,354	121,552,056		
5. Lease: Contributions in aid of construction								2,241,040	
6. Accumulated deferred income									
7. Taxes - liberalized depreciation As of 1/1/65 adjusted	14,060,820	16,661	17,177,107,197	17,177,107,197	17,177,107,197	17,177,107,197	17,177,107,197	17,177,107,197	Table 2
8. Net electric plant	140,447,772	125,340,531	111,380,869	111,380,869	103,489	246,689	1,962,852	7,427,016	Factor A
9. Plus Yankee and Corn Yankee - net	11,397,508	16,660	9,788,186	9,788,186	200,094	203,811	72,194	136,899	Factor T
10. Materials and supplies	10,042,079	193,691	2,394,561	2,394,561	115,914	92,619	24,938	212,371	Dep. P.
11. Prepayments	2,493,789	99,226	8,610,529	8,610,529	416,404	315,334	107,216	89,216	Factor V
12. Prepayments	9,306,952	836,422	117,119,632	117,119,632	117,119,632	117,119,632	117,119,632	117,119,632	
13. Cash working capital	1453,928,050	1254,316,512							
14. Rate base									
15.									
16. Expenses	\$ 90,391,126	\$ 6,699,353	\$ 73,691,723	\$ 73,691,723	\$ 7,667,107	\$ 2,312,317	\$ 932,319	\$ 62,759,010	Table 2
17. Operation and maintenance	10,744,635	745,532	17,999,263	17,999,263	846,987	699,007	187,005	1,753,280	Ratep. Pl. - Cont'd.
18. Depreciation expense									
19. Taxes other than income	31,265,816	1,460,046	29,605,768	29,605,768	1,444,153	1,148,815	309,104	2,302,912	Table 2
20. Municipal taxes	1,162,964	30,480	1,232,284	1,232,284	43,233	26,500	9,302	9,315	1,242,949
21. Payroll	102,125		102,125	102,125	102,125	102,125	102,125	102,125	Table 2
22. Highway use and motor excise	1111,886,896	9,155,633	1111,886,896	1111,886,896	1,021,560	1,196,319	111,351	111,351	1,449,528
23. Total expenses	35,314,264	1,966,921	35,314,264	35,314,264	1,367,223	1,269,570	171,223	171,223	20,897,163
24. Return at 8.0 percent	16,715,163	626,733	16,023,335	16,023,335	901,226	773,516	196,363	1,021,235	Table 2
25. Taxes on income									
26. Miscellaneous revenues									
27. Total cost of services	\$104,916,303	\$112,737,872							
28. Revenues from sales of electricity	\$102,316,573	\$111,541,877	\$110,872,996	\$110,872,996	\$ 6,413,605	\$ 6,322,692	\$ 941,296	\$16,887,213	Table 2
29. Other revenues	\$111,811,522	\$112,716,821	\$110,977,443	\$110,977,443	\$ 6,613,605	\$ 6,322,692	\$ 941,296	\$16,887,213	Table 2
30. Total revenues	\$111,196,146	\$112,716,821	\$110,977,443	\$110,977,443	\$ 6,613,605	\$ 6,322,692	\$ 941,296	\$16,887,213	Table 2
31. Revenue deficiency - flow thru (L27-L28)	\$ 3,240,162	\$ 519,176	\$ 3,200,966	\$ 3,200,966	\$ 960,863	\$ 966,311	\$ 59,999	\$ 2,896,999	Table 2
32. Percent of total revenues		2.02			1.97	1.97	1.97	1.97	1.97
33. Normalization	\$ 8,461,036	\$ 925,357	\$ 4,621,275,559	\$ 4,621,275,559	\$ 8,045,079	\$ 10,931,876	\$ 46,723	\$ 612,341	Table 2
34. Normalized rate base (L15-L33)	\$445,267,014	\$23,931,453							
35. Cost of service									
36. Add tax saving	49,957,727 (b) x 6,344,668	7,097,426	321,474	6,269,952	278,140	209,000	25,667	243,487	Table 2
37. Class 2,239,467	492,863	47,629	445,214	47,629	32,602	25,459	6,943	45,003	Table 2
38. Deduct fl. clswre line 33									
39. Deduct income tax re line 39									
40. 1,239,407 x line 39									
41. Net addition									
42. Normalized cost of service (L27 & L42)	\$192,462,087	\$12,265,967	\$119,053,400	\$119,053,400	\$ 7,264,706	\$ 1,046,305	\$ 16,107,951	\$16,107,951	Table 2
43. Revenue deficiency (L43-L30)	\$ 9,265,967	\$ 1,139,969	\$ 8,123,932	\$ 8,123,932	\$ 1,146,016	\$ 1,059,160	\$ 5,295,114	\$ 4,490,315	Table 2
44. % of total revenues		5.11			4.61	32,44	16,61	22,15	

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Statement N - Table 1

(a) Increase in deferred taxes from 1963 to 1964 due to liberalized depreciation.

(b) The Company normalizes for only the federal portion of the tax saving due to liberalized depreciation.

(c) Includes revenue for Boston Gas Company on Rate M unadjusted for special contract.

The calculations in this study are made in accordance with F.P.C. Instructions (Section 33, 117b (4) (iv) of Regulations under Federal Power Act) for the purposes of this presentation only. The Company does not agree with the methods used in deriving an appropriate rate base and the allowable expenses, and these items are stated by way of enumeration and not of limitation as to areas in which the Company is in disagreement.

BOSTON EDISON COMPANY

Comparison of Cost of Service  
with Revenues under the  
Proposed Rate - 1968

<u>Line No.</u>	<u>Municipal 14 kV</u>	<u>Private 14 kV</u>	<u>Private 115 kV</u>	<u>Total</u>
1 Allocated Cost of Service				
2 Statement N, Table 1, Line 27	\$ 8,559,575	\$ 7,224,071	\$2,006,186	\$17,789,832
3 Revenues under proposed Rate:				
4 From Sales of Electricity	7,875,958	7,185,623	1,926,227	16,987,808
5 Other Revenues (Line 29)	5,085	4,068	1,091	10,244
6 Total Revenues	7,881,043	7,189,691	1,927,318	16,998,052
7 <u>Rate Base - Table 1, Line 15</u>	\$21,359,409	\$17,119,633	\$4,640,437	\$43,119,479
8 Revenues (Line 6 above)	\$ 7,881,043	\$ 7,189,691	\$1,927,318	\$16,998,052
9 Less Expenses:				
10 Statement N, Table 1, Line 23	6,021,560	5,196,519	1,458,551	12,676,630
11 Misc. Revenues, Table 1, Line 26	(73,074)	(65,554)	(19,963)	(158,591)
12 Return and Taxes on Income	1,932,557	2,058,726	488,730	4,480,013
13 Less:				
14 Net Deductions (Table 4, Line 22)	931,172	744,277	200,956	1,876,405
15 Taxes - Purchased Power	9,038	8,107	2,469	19,614
16 Taxable Income (Line 12-14-15)	992,347	1,306,342	285,305	2,583,994
17 Taxes at 55.34532%	549,218	722,999	157,903	1,430,120
Plus Taxes Purchased Power	9,038	8,107	2,469	19,614
19 Less Tax Credits - Table 4, Line 34	31,455	26,598	7,659	65,712
20 divided by 2.239407	526,801	704,508	152,713	1,384,022
21 Taxes on Income				
22 Return (Lines 12-21)	\$ 1,405,756	\$ 1,354,218	\$ 336,017	\$ 3,095,991
23 Percent Return - Flow Through	6.58%	7.91%	7.24%	7.18%
24 Line 22 divided by Line 7				
25 Normalized Rate Base:				
26 Statement N - Table 1, Line 34	\$20,951,876	\$16,801,410	\$4,553,652	\$42,306,938
27 Normalized Return:				
28 Deduct Tax Saving - Liberal Depr. 1968	124,203	93,721	24,858	242,782
29 Table 1, Line 38 divided by 2.239407	\$ 1,281,553	\$ 1,260,497	\$ 311,159	\$ 2,853,209
30 Adjusted Return (Lines 22-29)	6.12%	7.50%	6.83%	6.74%
31 Percent of Rate Base, Normalization				
32 Line 30 divided by Line 26				

R824

Statement N - Table 2 46

BOSTON EDISON COMPANY  
Comparison of Cost of Service  
with Revenues under the  
Present Rate - 1968

Line No.		Municipal 14 kV	Private 14 kV	Private 115 kV	Total
1	Allocated Cost of Service				
2	Statement M, Table 1, Line 27	\$ 8,559,575	\$ 7,224,071	\$2,006,186	\$17,789,832
3	Revenues under Present Rate:				
4	From Sales of Electricity	6,613,605	6,323,692(a)	1,945,296	14,882,593
5	Other Revenues	5,085	4,068	1,091	10,244
6	Total Revenues	6,618,690	6,327,760	1,946,387	14,892,837
7	<u>Rate Base</u>				
8	Revenues (Line 6 above)	\$21,359,409	\$17,119,633	\$4,640,437	\$43,119,479
9	Less Expenses:	\$ 6,618,690	\$ 6,327,760	\$1,946,387	\$14,892,837
10	Statement M, Table 1, Line 23	6,021,560	5,196,519	1,458,551	12,676,630
11	Misc. Revenues, Table 1, Line 26	(73,074)	(65,554)	(19,963)	(158,591)
12	Return and Taxes on Income	670,204	1,196,795	507,799	2,374,798
13	Less:				
14	Net Deductions, Table 4, Line 22	931,172	744,277	200,956	1,876,405
15	Taxes - Pur. Power, Table 4, Line 27	9,038	8,107	2,469	19,614
16	Taxable Income (Lines 12-14-15)	(270,006)	444,411	304,374	478,779
17	Taxes at 55.34532%				
18	Plus Taxes Purchased Power	(149,436)	245,961	168,457	264,982
19	Less Tax Credits - Table 4, Line 34	9,038	8,107	2,469	19,614
20	divided by 2.239407				
21	Taxes on Income (Lines 17 & 18-20)	31,455	26,598	7,659	65,712
		(171,853)	227,470	163,267	218,884
22	Return (Lines 12-21)	\$ 842,057	\$ 969,325	\$ 344,532	\$ 2,155,914
23	Percent Return - Flow Through				
24	Line 22 Divided by Line 7	3.9%	5.7%	7.4%	5.0%
25	Normalized Rate Base:				
26	Statement M, Table 1, Line 34	\$20,951,876	\$16,801,410	\$4,553,652	\$42,306,938
27	Normalized Return:				
28	Deduct Tax Saving - Liberal Depr. 1968				
29	Table 1, Line 38, Divided by 2.239407	124,203	93,721	24,858	242,782
30	Adjusted Return (Lines 22-29)	\$ 717,854	\$ 875,604	\$ 319,674	\$ 1,913,132
31	Percent of Rate Base, Normalization				
32	Line 30 Divided by Line 26	3.4%	5.1%	6.9%	4.4%

(a) Includes revenue from Boston Gas Company at Rate M unadjusted for special contract.

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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Boston Edison Company

Docket No. \_\_\_\_\_

MOTION TO REJECT SUBMISSION OF RATE CHANGE

Law office of:  
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Washington, D. C. 20037

February 24, 1970

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R349

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Boston Edison Company

Docket No. \_\_\_\_\_

MOTION TO REJECT SUBMISSION OF RATE CHANGE

The Municipal Light Boards and Departments of Reading and Wakefield, Massachusetts, through their attorney, hereby move the Commission to reject the submission dated January 29, 1970, by Boston Edison Company proposing the supersedure of its wholesale electric Rates M and N-1 by increased rate S-1 effective April 1, 1970 on the following grounds that:

(i) No filing date can be assigned to the proposed Rate S-1 because Edison's submission is "incomplete" under <sup>\*/</sup> Section 35.2 of the Commission's Regulations, in that there has not been furnished "all supporting data required to be filed in compliance with the requirements of Part 35 of such

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<sup>\*/</sup> The term "Regulations" refers through this paper to the Federal Power Commission's Regulations under the Federal Power Act.

Regulations."

(ii) The Rate S-1 submission must be rejected under Section 35.5 of the Regulations because it "patently fails to substantially comply with the applicable requirements set forth" in Part 35 of such Regulations.

The Towns further move that, pending Commission action on this motion, no filing date should be assigned to proposed Rate S-1.

#### INTRODUCTION

Boston Edison Company proposes an unprecedented increase of 20% on its jurisdictional wholesale rates and the companion imposition of drastic restrictions upon the right and ability of its utility customers to develop alternative competitive sources of power supply, - which are obviously needed to counter the new rate philosophy of Boston Edison Company. The Towns of Reading and Wakefield are jurisdictional customers who purchase their power supply from Edison for resale, and they suffer a combined increase of approximately \$750,000 per year, under the proposed rates.

The Federal Power Act provisions are generous to public utilities: upon a proper submission, a company

can unilaterally increase its wholesale rates and collect the increase subject to investigation and refund at the end of the proceeding. Since a rate case can be expected to take two to three years, or more, in effect the utility unilaterally imposes its rate increase during this period. The refund of the unjustified portion of the increase, with interest, is no problem to the utility; it has had the use of the customers' funds during the period, as an alternative to borrowing funds elsewhere.

The immediate impact of Edison's unilateral increase would be drastic to Reading and Wakefield. They cannot begin to absorb a 20% increase in rates, and must immediately pass the increase along to their customers. Further, Edison has not increased its retail rates, and the unilateral wholesale rate increase places Reading and Wakefield in a difficult competitive position vis-a-vis Edison's industrial retail Rate G. Depending upon particular loads and load factors, retail Rate G is lower than proposed Rate S-1 for 13.8 kv delivery. Rate S-1 for 115 kv delivery is slightly less than Rate G at 13.8 kv, but the differential is insufficient to permit the absorption of the step-down

and transmission costs. Thus the unilateral filing could mean the loss of potential industrial customers during the period of Commission investigation. Irrespective of whether the ultimate Commission decision finds the proposed rate change unjustified, there will be an unrealistic, drastic, and possibly irreparable, impact from the unilateral filing.

The potential abuse of the Act's rate change provisions is obvious, and the Commission's Regulations therefore require a competent showing in support of the proposed change before the Commission accepts the proposal for filing and thus allows the utility's unilateral filing to become effective subject to investigation and refund. Strict adherence to these Regulations is essential here because of the drastic nature of the unilateral rate increase and restrictive provisions, as noted above.

Edison's non-compliance with the Commission's Regulations is impressive. As we show below, Edison has failed to make the necessary revenue comparisons, (Item 1) and this is particularly necessary because of an ambiguity in the rate schedule (Item 2). Edison has not provided the latest available financial information (Item 3) and uses

an already stale test period - the year 1968. (Item 6). It has separated neither the depreciation reserve nor the depreciation expense between the functional classifications of generation, transmission, distribution and general plant (Items 4 and 5). Edison makes no effort to justify its non-complying depreciation practices, rather it discloses a bald refusal to follow the Commission's Uniform System of Accounts in its depreciation practices.

Beyond all this, Edison does not state the basis for its proposed rate change or how the new rates were developed (Item 7). This is indeed a mystery; Edison's overall earnings have continued to rise through 1969, so the sudden imposition of a 20% wholesale rate increase indicates a drastic but undisclosed change in rate-making methods. This comes at a most inopportune time for Reading, - after it has committed itself to an investment of \$1,300,000 for the 115 kv interconnection, with feasibility based upon Edison's previous rate philosophy.

Finally, Edison proposes drastically to restrict its wholesale customers from obtaining alternative power supply, either by self-generation or outside purchase, thus

suppressing competitive opportunity (Item 8). These and related restrictions are contrary to antitrust law and policy and therefore must be stricken before any rate proposal is accepted for filing (Items, 9, 10, and 11).

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ARGUMENT

The following items explain the incompleteness of Edison's submission, and the patent failure to substantially comply with the Regulations.

1. Omission of anticipated 115 kv revenues from Reading.

Section 35.13 requires a statement comparing sales and services and revenues for the twelve months succeeding the proposed effective date, here April 1, 1970. In the case of Reading, Edison has not compared these for the 115 kv services which Edison must initiate by November, 1970. Reading submitted and Edison accepted on May 31, 1968 an application for 115 kv service which was scheduled for completion by Fall of 1969, <sup>\* /</sup> the interconnection to be made at an agreed location at the Reading town limits. Reading in good faith committed itself to the purchase and installation of approximately \$1,300,000 in necessary facilities, initiated land takings, and placed itself in a position to meet the scheduled interconnection date. Edison failed to perform, and as a result Reading in 1969 was forced to add an otherwise unnecessary 13.8 kv supply feeder, costing some \$80,000, in order to meet its load growth commitments for the 1969-1970 winter peak.

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\* / Appendix A hereto:

Reading Application for 115 kv service, accepted May 31, 1968; Boston Edison letter of May 31, 1968 to Reading's counsel, forwarding accepted application.

This 115 kv interconnection must be completed by November 1970, in order for Reading to meet its Winter 1970-71 peak. Edison officials have given assurances that they expect to extend their 115 kv lines to Reading by November 1970. Edison thus knows that by November 1, 1970 Reading will be purchasing service at 115 kv, and it knows the circumstances involved. Thus, it cannot justify its failure to show the sales, services and revenues at 115 kv which will be in effect for at least the period November 1970 through March 1971. Instead it shows this service as continuing at 13.8 kv which is "patently" incorrect. The matter is a substantial one: under the submitted Revenues comparison for Reading, the KW billing demand units for this period total 271,990 and, at the 70¢ surcharge, produce a difference of \$190,503, if Reading's total loads were served at 115 kv immediately upon interconnection, if we correctly understand the submission. One purpose of the revenue comparison is to make clear the rate's application. In addition, Edison fails to make a statement as to the "lump sum payment" it expects to exact from Reading with reference to the cost of extending its 115,000 volt lines to the Reading interconnection, which will occur within the 12

months immediately succeeding April 1, 1970. This is "revenue" within the meaning of Section 35.13(b)(1) of the Regulations and must be supported (e.g. re Statements M(1) and N(1) of Section 35.13(b)(4)(iv)).

The submission also fails to compare the sales and services and revenues under Boston Edison's Rate N-1 which is also a "rate schedule proposed to be superseded" within the meaning of Section 35.13 (b)(1) of the Regulations.

Edison's acceptance of Reading's application for 115 kv service specified that its Rate N-1 was the "only rate" available for 115 kv service (Boston Edison's letter of May 31, 1968, Appendix A).. In reliance upon the availability of this rate, as an alternative to Rate M, Reading has committed itself to an investment of approximately \$1,300,000 for the 115 kv interconnection. Edison, however, took the view that "Rate M is not available" for Reading's interconnection. Nonetheless, the instant submission compares Reading service under Rate M during this 115 kv period. Edison must compare revenues under Rate N-1 and proposed Rate S-1 for Reading loads after November 1, 1970, in order to comply with the Regulations.

2. Failure to clearly and specifically set forth  
the rates and charges for interim 115 kv service.

Section 35.1(a) requires the submission of rate schedules which "clearly and specifically set forth all rates and charges", but Edison's proposed Rate S-1 provision for "interim 115 kv Service" is so vague and ambiguous that it cannot be applied with assurance (Original Sheet No. 15, Exhibit B). It leaves Reading in the dark as to how to plan substantial investments during the interim period after the initiation of 115 kv service by November 1970.

Thus, "during a period of changeover to 115 kv service" when the "Company is required . . . to relay the 115 kv service with 14 kv . . . Company facilities or vice versa" (Par. (37)) the Company proposes to charge the Basic Rate "plus additional charge of \$0.70 per kva of maximum 60-minute kva demand in the current or preceding eleven months" (Par. (2)). This is ambiguous in the following respects:

(i) The term "relay" is undefined in the rate schedule. Moreover the term relay has

\*/

no established technical meaning which can be applied here. Nevertheless, important consequences turn upon it, i.e., if no "relay" is required during the change-over there will be no 70¢ per kva charge for 13.8 kv service used on an interim basis. Reading obviously cannot intelligently plan its changeover procedures unless the rate schedule is clear and definite as to the circumstances which do and which do not require payment of the 70¢ surcharge. The undefined "relay" criteria leaves the Company with wide discretion as to how it chooses to apply the criteria in a given case.

(ii) The confusion is enhanced by the provision for "Billing During Period of Changeover to 115 kv service" (Original Sheet No. 16, Exhibit B), which fails to exclude

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\*/ "RELAY POWER - power accepted by one electric utility for simultaneous delivery to another, either directly or by displacement" - Definition No. 45, Glossary of Independent Power and Rate Terms, Abbreviations and Units of Measurement, 1949, FPC et al.

This concept is changed to "Displacement Power" in the 1965 Glossary.

"Relay. A relay is a device that is operative by a variation in the condition of one electric circuit to effect the operation of the devices in the same or another electric circuit." American Standard Definitions of Electrical Terms, American Institute of Electrical Engineers, page 90.

from its literal terms the situation obtaining under paragraph (3) during a period of changeover when the Company is not "required to relay" the services, and the customer is not required to pay the 70¢ surcharge.

The difficulty is increased because of the failure to show the sales, service and revenues of Reading's 115 kv purchases during the period November 1970 through March 1971, noted in Item (1) above. Had Edison complied with the Commission's rules it would at least disclose its intended interpretation, - although this is not an adequate substitute for clear and definite rate schedule provisions.

This further illustrates that the Company's non-compliance with the Regulations is substantial.

3. Failure to provide most recently available financial statements.

The Commission's Regulations require the filing of "the most recently available" balance sheet, income statement, and earned surplus statement (Section 35.13(b)(4)(iv); Statements A, B and C). The Company patently violated this rule by claiming by submission on January 19, 1970 that its financial statements dated June 30, 1969 were "the most recently available", although on November 1, 1969 it had already

issued a quarterly income statement for the twelve months ended September 30, 1969. Statement B is thus deficient. Undoubtedly, Edison also had balance sheets and surplus statements for September 30, 1969, so that Statements A and C are also deficient. Moreover, by the same time measure, when the Company submitted its proposed filing on January 29, 1970, it would already have available to it its financial statements for November 30, 1969.

Edison's June 30, 1969 income statement was issued to the stockholders on August 1, 1969. At that time it was the most recently available statement, but 5 months have transpired since then. During that period it issued its September statement, approximately one month after September 30, 1969. It is thus apparent that Edison completes its financial statements approximately one month after the end of each month, and Edison's most recently available statement when it made its submission here would be for November 30, 1969.

This is a matter of substance. Edison thus presents a deceptive presentation purporting to show the Commission and  
\*/ Edison's Quarterly Dividend Report is attached as Appendix B.

customers a declining income to the Commission, <sup>\*</sup> but an increasing income to the stockholders. Its November 1, 1969 report for the year ending September 30, 1969 shows an increase in income over the year earlier picture, and an <sup>\*\*</sup> increase in earnings per share.

Edison has thus also violated the Regulations as to Rate of Return because it has not shown long term debt and preferred stock by classes, and common stock sales, up through "the date of the most recently available balance sheet" (Section 35.13 (b) (4) (iv) : Statement G.)

4. Failure to state the accumulated depreciation by functional classification.

Statement E of the Regulation requires the "statement of the accumulated provision for depreciation by functional classifications", but Edison has not done this. Instead it presents one total balance for accumulated depreciation. In short, the Regulations require that accumulated depreciation be stated as to types of generation, transmission, distribution and general plant, but Edison merely gives the total.

To make matters worse, Edison discloses its continuing refusal to follow the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

\* Statement B claims June 30, 1969 income of \$22.9 million as compared to \$23.6 million for December 31, 1968.

\*\* Income per year ending September 30, 1969 is \$25.5 million after extraordinary items, and \$24.2 million before, as compared to \$23.4 million for the year earlier.

The System requires as to accumulated provision for depreciation that ". . . each utility shall maintain subsidiary records in which this account is segregated according to . . .  
functional classification for electric plant . . .".

Edison now states that " . . . no breakdown between various kinds of property has been made on the books of the Company" (Statement E of Edison submission). The rate disclosures that Edison simply carries a "blob" reserve applicable to all depreciable property, with no breakdown between various kinds of property.

Edison has been a consistent defier of FPC jurisdiction, authority and control. Mr. Charles R. Ross, former Federal Power Commissioner, has recently submitted testimony to the Securities and Exchange Commission in the

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\*/ Account No. 108. Accumulated provision for depreciation of electric plant in service.

" C. For general ledger and balance sheet purposes, this account shall be regarded and treated as a single composite provision for depreciation. For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregated according to the following functional classification for electric plant: (1) Steam production, (2) Nuclear production, (3) Hydraulic production, (4) Other Production, (5) Transmission, (6) Distribution, and (7) General. These subsidiary records shall reflect the current credits and debits to this account in sufficient detail to show separately for each such functional classification (a) the amount of accrual for depreciation, (b) the book cost of property retired, (c) cost of removal, (d) salvage, and (e) other items, including recoveries from insurance."

proposed merger of Boston Edison, New England Electric System  
and Eastern Utilities Associates <sup>\*</sup> that:

"An example of a company which has sought to avoid Federal regulation in the past is Boston Edison. This worked to the detriment of the public since possible economies from interconnections have been foregone." (Department of Justice Exhibit No. 68, p. 7)

\* \* \*

"I would hazard a guess that the progress achieved to date in New England would not be anywhere near as great as it has been had all the New England utilities been under the umbrella of Boston Edison, a company not known for its willingness to accept regulation." (Department of Justice Exhibit No. 68, p. 10)

Nevertheless for many years Edison has been connected to the interstate grid, with interstate power flows over the Edison system clearly shown on the Form 12 Reports of Edison and its interconnected utility systems, and since 1964, its wholesale rates have been on file at the Federal Power Commission, - but the company has obdurately refused to follow FPC directions. As recently as May 22, 1967, Edison continued openly to assert its <sup>\*\*</sup> freedom from FPC jurisdiction.

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\* / Matter of New England Electric System, et al., SEC Docket No. 70-4663.

\*\* / See Exhibit C to Application and Complaint filed May 13, 1968, Reading and Wakefield v. Boston Edison Company, FPC Docket No. E-7400.

Edison now seeks to accept FPC jurisdiction and authority on a partial basis, i.e., it would like the Commission to assign a filing date to its submission of a proposed rate increase in order to invoke the rate increase mechanisms of Section 205 of the Federal Power Act; but it patently rejects Section 301(a) of the same Act which requires that ". . . every . . . public utility shall make, keep and preserve for such periods, such accounts, records of cost accounting procedures . . . other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act . . . ."

Edison has had plenty of time to correct its books since this matter has been called to its attention a long time ago in prior proceedings. We are certainly entitled to have the System of Accounts followed and have the rules followed, and should not be placed under the burden of having to develop functional reserves ourselves. The costs attributable to Edison's resale customers could be quite different than Edison shows in its filing if its depreciation reserves were shown correctly, as the reserves permeate the rate base, amount of return, income taxes, etc.

Edison's submission must be rejected until it complies with the Regulations. To do otherwise would enable it to have the benefit of the company-protective provisions of the Act without obeying the Act's public-protective provisions.

5. Failure to functionalize depreciation expense.

Edison is also defying the Commission's requirements for functionalizing of depreciation expense, as shown by its submitted Statement I. This necessarily follows since, absent a segregation of the accumulated depreciation, Edison cannot determine the charges for depreciation expense by separate functions. The Regulations require that Statement I "show depreciation expense by functional classification."

This in turn reflects the requirements of the Uniform System of Accounts for depreciation expense amounts "for all classes of depreciable electric plant" (Account 403). The requirement is also specified through the prescription of the Form 1 Annual Report (FPC Regulations, Section 141.1). The Form 1 Report specifically requires the statement of the "amounts of depreciation expense charged" for the year, classified according to plant functional classifications" (page 429, Instruction 1).

Instead of separating depreciation expense by

functions, Edison shows a "blob" amount and states that no breakdown has been made on its books. Thus, Edison patently violates both the requirements for filing rate changes, as well as the Uniform System of Accounts.

The annual rates used in computing depreciation expense and the method of determining such depreciation rates are required to be shown by the rules. No annual depreciation rates are shown in the filing but the end result of what that company did Companywide, appears to come out to 3 percent of total Companywide depreciable property. The method of determining the depreciation rates is not shown; all that is stated is that the amount of depreciation is believed by management to be sufficient to meet write-offs of the cost of property at the end of its usual life. Instead of using the sound, generally accepted, service life basis for depreciation it is using retirement form of depreciation accounting mixed with other undefined elements.

This tactic by Edison of not showing depreciation by functions would throw a heavy burden on Intervenors since it is important to know how much accrued depreciation and how much depreciation expense should be charged against the production and transmission functions. The resale customers

share mainly in the production and transmission costs, but do not share (except for perhaps certain specific facilities) in the distribution costs. If the Company does not initially segregate its reserves, it is difficult, if not impossible, for any Intervenor to ascertain what the proper depreciation reserve is and what the proper depreciation expense is on the property he bears responsibility for. The customers are entitled to have the rules followed to be able to test the claim of the Company on its own book figures; they should not be placed under the burden of developing and rewriting the Company's books in order to analyze the rate case.

These are substantial matters. The accumulated provision for depreciation is close to 30% of the total utility plant which through the fixed charges for return and income taxes controls the largest single part of the cost of service. (\$55.0 million out of a claimed total of \$186.9 million, per Edison submission, Statement L). Again, depreciation expense is another major component of the cost of service (\$18.7 million, id). Proposed Rate S-1 develops a "base rate" on the transmission level, and therefore the Commission's requirements for segregating depreciation on a

functional basis is essential to an objective development of cost of service. Absent compliance with the Commission's Regulations, Boston Edison retains considerable discretionary leeway to allocate these items as best may serve the Company's objectives in a particular case.

6. Edison's Test Period is stale and unreasonable and the filing otherwise fails to make a prima facie case

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The requirement that cost of service should contain an analysis of system costs for "a test period of twelve consecutive months" does not mean that any old test year can be chosen. For example, the submission would certainly be rejected out of hand if the Company used a 1965 test year. It requires a reasonable choice of a test year, and this necessarily means one that is as up to date as possible because the Commission is fixing rates for the future. Edison has patently acted unreasonably in filing in 1970 a proposed rate increase to become effective late in 1970 purportedly supported by a 1968 test period. The earliest these rates can become effective is April 1, 1970 but, with suspension this would be postponed to November 1, 1970, by which time the test period will be already almost two years stale.

The Company's basic cost of service data is for the year 1968. Although some fragments are shown as of June 30, 1969, they are not sufficient to put together as a cost of service. The year 1968 was over one full year stale on the date of filing January 29, 1970, and will be one year and three months stale by the proposed effective date April 1, 1970, and certainly two and probably three years stale before a litigated case could be carried through. The Company had available to it in time to prepare for a filing on January 29, 1970, the figures for at least the year ended September 30, 1969 because its quarterly Financial Report to Stockholders dated November 1, 1969 shows income statements for the year ended September 30, 1969. See attached photocopy of this Report to Stockholders in Appendix B. Edison had all its bookkeeping for the year ended September 30, 1969 done on or before November 1, 1969, over three months prior to the filing date. Obviously preparations and various studies could have been done even prior to November 1, 1969.

It is to be noted from the Quarterly Report that in the twelve months ended September 30, 1969, Edison's net operating income went up as opposed to the prior years, and income per common share went up from \$2.87 to \$2.98 before the extraordinary item of \$.17 in the 1969 period. This

extraordinary item which amounted to \$1,264,293, or \$.17 per common share, was the income tax savings from retirement of obsolete property. Obviously, if obsolete property has been retired in the year ended September 30, 1969, this should be given account for in determining rates. However, Edison's test year 1968 is not adjusted in its filing to remove the operating costs of such obsolete property nor to reflect the increased profitability of the replacement of such property. Edison is supposed to be in the middle of a program to replace its old obsolete generating and transmission plant with new efficient lower cost plant. No adjustment is made to the stale 1968 test period to reflect any of this.

As shown in the Quarterly Report, REMVEC went into effect on November 5, 1969, and "provides improved reliability and operating economies to all the participating companies." These operating economies have not been reflected in the Company's filing.

While the Quarterly Report shows a very healthy increase in sales revenues (and the Municipalities are aware of the steady and substantial growth in sales on their own systems) Edison's filing does not adjust the stale test year for the effects of such growth and concomitant lower costs

arising from the benefits of scale in production and transmission facilities.

While Edison's filing Statement 3 shows that its utility operating income decreased as between the year ended December 31, 1968 and the year ended June 30, 1969, its Quarterly Report to Stockholders shows an increase for the year ended September 30, 1969 as against the prior comparable year. The chronological array of operating income figures is shown below:

<u>Net Operating Income</u>	
Year ended September 30, 1968	\$31,711,844
Year ended December 31, 1968	31,864,307
Year ended June 30, 1969	31,197,036
Year ended September 30, 1969	32,583,333

While it is true that the results of Edison overall operations do not necessarily govern the results from the resale customers which are relatively a small part of Edison's operations, nonetheless, these figures indicate that Edison's operations are improving contrary to the impression conveyed by Edison's filing.

In Tennessee Valley Municipal Gas Association v.  
Alabama-Tennessee Natural Gas Company, FPC Docket No. RP66-25,

the Commission dismissed (Order issued October 17, 1969; rehearing denied by Order issued December 8, 1969, Appendix C) a ratepayer petition for lower rates on the grounds that the three year old test period was too stale even though a good part of the lag was due to waiting for the Examiner and the Commission to act. If Edison's filing goes through the full hearing procedure, Examiner's Decision, etc., then its 1968 test period will likely be over three years stale. Edison could have easily avoided filing a stale test period to start the case with. Its filing for higher rates should be rejected as not supportive of its proposed new rates by reasonably current data adjusted for known changes.

7. Failure to state basis for rate filing.

Just prior to the last sheet in its cost of service filing, the Company has a sheet entitled "Reservations" on which it repudiates the "rate base and the allowable expenses" contained in its filing. There is also a specific repudiation written on Statements J, L , M-Table 1, M-Table 1A, M-Table 2, M-Table 2A, M-Table 3, and M-Table 3A. The Company states that it is filing the data only to comply with FPC regulations.

In Statements N-Table 1 and N-Table 2 and Statements M-Table 1 and M-Table 2, the Company shows the results of the

costing process it does not believe in. The results show a wide variations of return earned on various classes of business and a wide variations of the difference between revenues and cost of service by classes. But nowhere does Edison show the buildup of costs that actually went into the design of its proposed new rates. Nowhere does it show the methods it deems proper which presumably were used to determine the level of, and structure of, its new proposed rates. The new proposed rates could not have been pulled out of the air -- they had to have some foundation.

Edison states in its reservation that its cost of service is "for the purposes of this presentations only." Does it intend to furnish the true cost of service underlying its proposed rates as part of its direct case when the hearings start?

A rate filing should furnish the data required by the rules (which Edison's does not) but in addition it should furnish the actual basis upon which the proposed rates were in fact derived. The rate payers are entitled to know what costs and profit Edison thinks if proper to collect from them, even though it may be different from the data required by the rules. Any filing that does not afford the ratepayer

a reasonable opportunity to evaluate the data, methodology and reasoning that actually went into the makeup of the proposed rates is unjust and unreasonable on its face. Edison's filing should be rejected as not supportive of its proposed new rates.

8. Proposed restrictions are patently unlawful and unreasonable.

The Company's submission proposes a series of severe restrictions on the customers right to resell power, or to develop alternate sources of power either by way of self-generation, or competitive purchase. These are plainly unduly restrictive. They violate antitrust policy and law. The effect would be to hold the Company's customers captive, and prevent their obtaining lower-cost alternate power, while Edison seeks to force-feed a drastic 20% rate increase free of competitive restraints.

These restrictive efforts come at a most inopportune time in New England electric utility matters because they would inhibit promising developments in regional power supply cooperation. They could prevent Edison customers from participation in purchases from the Vermont and Maine Yankee projects, and thus interfere with current plans for

settlement being developed by sponsor companies and municipal utilities. Edison should be concerned with this matter, even though it is not a sponsor of either project. It would deprive Edison customers of the opportunity to accept outstanding offers to purchase power from New Brunswick, or from the anticipated surplus Northfield Mountain power, otherwise assured by the Commission's Opinion Nos. 541 and 541-A Re Western Mass. Electric Co., et al. They would hamper Edison customers from participating in the evolving proposals for a New England Power Pool, and therefore increases the difficulty of negotiating a pool agreement which all parties can accept. It would hamper development of the promising proposal of Braintree's municipal plant to build a 400 MW fossil plant tied into Edison's transmission system.

Accordingly, the Commission should not permit these restrictions to become effective, even after suspension, and subject to investigation, since they will be in effect until the completion of hearing procedures and final Commission decision. This will be long enough to hamper the important regional developments now underway, and thus may result in irreparable loss of opportunities to these customers.

These are the types of contractual matters which the Regulations contemplate will be a matter of agreement with the customers (Section 35.13 (a)), but Edison has not afforded its customers even an opportunity to discuss these in an effort to determine whether there can be found a basis which Company and customers consider to fairly protect the interests of both. Obviously, Edison is entitled to some protection from sudden increases or decreases in load by its resale customers; but with an annual load growth about as large as the total of the distribution-utility customers, five year notice is unnecessary - a substantially shorter time will do. Bulk power supply arrangements are made for the future and subject to rearrangement as dictated by changes in load growth and construction lead times. Moreover, some notice on the customer side is no burden because substantial changes in power supply arrangements require considerable lead-time for consummation. Thus there is an area for agreement if a utility is willing to bargain in good faith.

The same questions were amicably resolved between New England Power Company and its 22 municipal utility customers. The Commission's order accepting the settlement

stated that it "reflects a reasonable resolution". Power Planning Committee v. New England Power Company, FPC Docket No. E-7388, Order issued September 10, 1968. NEPCO accepted notice requirements of less than two years. Such amicable settlements will be foreclosed if Edison is permitted to place the proposed restriction into effect in advance of the period of hearings and ultimate Commission decision.

To allow these restrictions to become effective would permit Edison to insulate itself from competition contrary to the rulings which established the necessity of competition as a complement to regulation. Northern Natural Gas Co. v. FPC, 399 F. 2d 953; S.E.C. v. New England Electric System, 384 U. S. 176; California v. F.P.C., 369 U. S. 482. The Commission's actions would be contrary to the rights of Massachusetts municipal utilities to have access to bulk power supply and transmission services which have been judicially recognized. Municipal Electric Ass'n of Mass. v. S.E.C., 413 F. 2d 1052, (March 1969); Municipal Electric Ass'n of Mass. v. F.P.C., 414 F. 2d 1206, (July 1969); and City of Statesville, et al v. A.E.C., \_\_\_\_ F 2d \_\_\_\_ (Dec. 1969).

The unreasonable and unlawful nature of these restrictions are discussed individually in Items 9, 10, and 11 below.

9. The proposed restrictions on resale are unlawful as well as ambiguous.

The Commission must also reject the Company's proposed restriction on resale set forth in the proposed General Terms and Conditions, Paragraph C, "Availability of General Service for Resale" (Original Sheet No. 5, Exhibit A). In effect, the artfully drafted paragraph can be interpreted by the Company as saying that there shall be no resale by the customer to other utilities except with the consent of the company. Thus, if a wholesale customer desires to make such a sale the Company will "advise the customer of its ability to supply such electricity and of the applicable rate schedule or its best estimates of charges for such service." The Company thus has sufficient leeway in this criteria to respond any way it wants -- leaving the customer with no alternative other than the years of pursuing a complaint proceeding before the Commission limited to prospective relief.

That artful interpretation has been practiced by Edison is well documented in the testimony of Edison's

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witness before the Securities and Exchange Commission where Mr. Thomas J. Galligan, Edison's President, tried to explain why the existing availability clause in Edison's Rate M, permits New England Power Company, as a Rate M customer, to purchase power and resell to the municipal utilities of Hull and Hingham, but would not permit the Towns of Reading and Wakefield to resell to neighboring utilities. How much easier it would be for Edison officials to interpret or apply the proposed language to prevent a resale which they did not desire for any reason - meritorious or not.

Thus, in effect, the provision is an unlawful restraint on the alienation of purchased electricity.

10. Restrictions on self-generation and outside purchase are unlawful.

Edison's proposed restrictions on its customers' right to install its own generating equipment or purchase electricity are unlawfully restrictive, and run counter to the efforts of the New England utilities to establish a New

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\* / "Available for electricity supplied by the Company in bulk to an electric company or a municipal lighting plant for redistribution to consumers located outside of the cities and towns, or portions thereof, within which the Company distributes and sells electricity."

\*\*/ Tr. pages 1984 to 1996, July 9, 1969 re New England Electric System, et al., File No. 1898. Appendix D hereto.

England Power Pool which all segments of the industry can accept. Edison proposes under special conditions a provision concerning "Availability of Partial Requirements Service" (Original Sheet No. 18, Exhibit D) which would require five years' notice of installation of generating capacity, other than peaking units of less than 20% of annual peak load (for which two years' notice would be required) and five years' notice of purchase of power from other sources. Upon such notice Edison would make available a still undefined partial requirements rate.

In this regard the right to purchase outside power, even on five years notice, is illusory, because the partial requirements rate is not set forth in this filing. This incompleteness provides further grounds for rejection of Edison's submission. Edison can kill any advantageous deals by proposing an unreasonable partial requirements rate. The need is now because bulk power is now being offered to all utilities in New England.

This restriction would violate antitrust laws and policy as well as being contrary to the public interest as discussed in Item 8 above. If permitted to become effective, after suspension, irreparable injury will be done because the losses occasioned cannot be even partially mitigated

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by any kind of refund order at the end of the years of hearing and decision. In other words, the Commission's acceptance of this unilateral restriction would bind the parties for the many years it will take to hear and decide this case.

Edison's proposed Peaking Unit Exception arbitrarily limits the installation of peaking generating capacity to no more than 20% of its annual peak load if it is to continue receiving power under Rate S. There is no supporting cost of service data for this 20% limitation, or any other basis set forth for the choice of 20%. The filing thus does not comply with Section 35.13 (a) for failure to state "the reasons for the proposed changes"; nor does it comply with Section 35.13 (b) (4) (iv) Statement M because there is not shown the allocated cost of service related to customer peak shaving.

The sizing of peak generation depends upon a number of significant factors, including size of and characteristics of load, rate of load growth, manufacturer's standards, and number of units to be installed. The most economical and reliable units may well be larger than 20%

of the peak load, particularly in the earlier years. This provision is unduly restrictive and appears designed to impede customers efforts to obtain a lower cost alternative to Edison's rates.

11. Five year notice of termination is unreasonable and unlawful on its face.

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The proposed "Definition and Special Conditions of All Requirements Service" (Original Sheet No. 17, Exhibit C) requires five year notice of termination of service which is plainly in excess of Boston Edison's needs for protection and therefore is unduly restrictive.

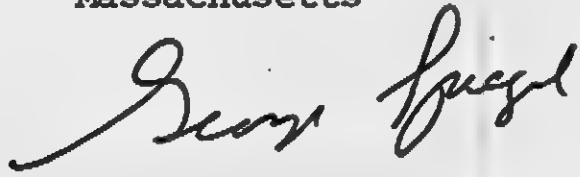
All of the same reasons, noted above with reference to alternate supply (Item 10 above), apply to this restriction. There is no showing that a 5-year restriction is needed for the protection of the company, and the effect is to hold these municipal utilities as captive customers, while the company makes unilateral rate increase filings, like the current 20% increase.

WHEREFORE the undersigned respectfully pray that the Commission reject Boston Edison Company's submission dated January 29, 1970 proposing an increase in rates and

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modification of terms and conditions, and that pending action on this motion, it decline to assign a filing date to the submission.

Respectfully submitted,  
Municipal Light Board and  
Departments of the  
Towns of Reading and Wakefield,  
Massachusetts



By \_\_\_\_\_  
George Spiegel, Their Attorney

Law offices of:

George Spiegel, Esq.  
2600 Virginia Avenue, N. W.  
Washington, D. C. 20037

February 24, 1970

BOSTON EDISON COMPANY  
EXECUTIVE OFFICES  
800 BOYLSTON STREET  
BOSTON, MASSACHUSETTS 02199

VICTOR H. KAZANJIAN  
ASSISTANT GENERAL COUNSEL

May 31, 1968

George Spiegel, Esquire  
2600 Virginia Avenue, N.W.  
Washington, D.C. 20037

Dear Mr. Spiegel:

Boston Edison Company acknowledges receipt with your letter of May 17, 1968 to Mr. Debevoise of an application by the Town of Reading for 115 kV service, dated May 6, 1968.

Edison is enclosing its acceptance of the application.

In anticipation of submission of an application by Reading, Edison has already taken steps towards an interconnection with a prospective 115 kV line to be built by Reading. Edison will carry these plans forward to the best of its ability so as to be in a position to interconnect its line with Reading's by the fall of 1969. With respect to right of way problems, Stauffer Chemical has advised us that it has decided to sell all its property and, under the circumstances, has referred us to potential buyers, one of which has told us that he would sell the right of way to us for not less than \$600,000. What effect this development will have on our progress remains to be seen. We are actively pursuing the matter and are inviting Mr. Gaw to attend conferences which may be held so that he may keep abreast of the situation first hand.

As anticipated in your letter of May 17, 1968, Edison is accepting this application intending to supply service under Rate N-1, that being its only rate which deals with the problem of the cost of construction of an interconnection, reflects costs of supplying all a customer's needs at 115 kV and contains the protective features to which the Company is entitled in view of the type of service and size of loads anticipated. It is our view that Edison's Rate M is not available in this situation. It is a higher rate than Rate N-1. Moreover, as you have been advised, Edison has under consideration plans to file changes of its M Rate, one of which would limit the rate to the 13.8 kV service for which it was originally designed should it be deemed necessary that the position be established in that fashion.

Very truly yours,

BOSTON EDISON COMPANY

By Victor H. Kazanjian  
Victor H. Kazanjian  
Assistant General Counsel

Sandra J. Strelbel, Esq.

General Light Board, Town of Reading

To Our Stockholders

BOSTON EKCO COMPANY  
Quarterly  
Dividend  
Report

November 1969

NOVEMBER, 1969

The accompanying figures show the results of Company operations for the nine- and twelve-month periods ended September 30, 1969, and for the nine- and twelve-month periods ended September 30, 1968.

CHARLES F. AVILA

Chairman

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	Nine Months Ended Sept. 30, 1969		Nine Months Ended Sept. 30, 1968		Twelve Months Ended Sept. 30, 1969		Twelve Months Ended Sept. 30, 1968	
<b>OPERATING REVENUES</b>	<b>\$149,406,498</b>	<b>\$140,777,080</b>	<b>\$197,959,815</b>	<b>\$187,614,660</b>				
OPERATING EXPENSES:								
Operation	60,504,479	55,107,648	79,644,228	73,466,983				
Maintenance	10,958,154	9,081,804	13,704,323	13,361,080				
Depreciation	15,106,500	14,373,000	20,153,202	19,199,585				
Taxes								
Federal Income	11,167,169	12,922,020	15,644,569	17,110,423				
Other	27,503,177	25,844,814	36,230,160	32,764,745				
Total	<u>115,239,679</u>	<u>117,329,286</u>	<u>165,376,492</u>	<u>153,902,816</u>				
NET OPERATING INCOME	24,166,819	23,447,794	32,583,333	31,711,344				
OTHER INCOME AND MISCELLANEOUS								
INCOME DEDUCTIONS — NBT	7,904	(199,353)	(17,869)	(237,855)				
INCOME BEFORE INTEREST CHARGES	<u>24,174,723</u>	<u>23,248,441</u>	<u>32,565,464</u>	<u>31,473,989</u>				
INTEREST CHARGES:								
Interest on long-term debt	8,052,462	6,298,846	11,213,294	8,396,318				
Other Interest	1,247,134	1,467,024	1,859,960	1,825,607				
Interest charged to construction-credit	(3,702,221)	(11,730,970)	(4,701,646)	(2,105,238)				
Total	<u>6,397,393</u>	<u>6,034,900</u>	<u>8,371,568</u>	<u>8,116,687</u>				
INCOME BEFORE EXTRAORDINARY ITEM	17,777,324	17,213,541	24,193,896	23,397,302				
Income tax savings from retirement of obsolete property								
NET INCOME	<u>17,777,324</u>	<u>17,213,541</u>	<u>24,193,896</u>	<u>23,397,302</u>				
PREFERRED DIVIDENDS	<u>1,471,700</u>	<u>1,471,700</u>	<u>1,960,000</u>	<u>1,960,000</u>				
INCOME AVAILABLE FOR COMMON STOCK	<u>\$ 16,305,624</u>	<u>\$ 15,741,841</u>	<u>\$ 23,498,899</u>	<u>\$ 21,397,102</u>				
EARNINGS PER SHARE OF COMMON STOCK	<u>\$2.11</u>	<u>\$2.11</u>	<u>\$2.98</u>	<u>\$2.87</u>				
Income before extraordinary item								
Extraordinary item								
Net Income	<u>\$2.11</u>	<u>\$2.11</u>	<u>\$2.11</u>	<u>\$2.11</u>				

The enclosed check represents  
your dividend payable November 1, 1969.

The date of record for holders  
of stock is at the close of busi-  
ness on October 10, 1969.

Your dividend is at the rate  
indicated below for the class of  
stock which you hold.

Common Stock \$ .52 a share

4.25% Preferred Stock \$1.07 a share

4.78% Preferred Stock \$1.20 a share

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MUNICIPAL LIGHT BOARD  
TOWN OF READING, MASSACHUSETTS

HAVEN STREET

Established 1895

DIAL 944-1346

Application to Boston Edison Company for  
115,000 Volt Service

Dated Nov. 6, 1968

The Municipal Light Department, Town of Reading, Massachusetts, requests to the Boston Edison Company (1) to extend its 115,000 volt lines to a point at the first intersection of the Allerton, Adams and Franklin to a 2 lines which has been mutually agreed upon by the two parties and (2) upon completion of construction of the necessary 115,000 volt facilities by both parties, to supply electric service under the Company's rate schedules applicable to such service as the same may be in effect from time to time subject to action of the Federal Power Commission.

Municipal Light Department  
Town of Reading, Massachusetts

By John L. Williams

John L. Williams  
Municipal Light Department  
Town of Reading, Massachusetts

Accepted by Boston Edison Company

John L. Williams  
Date Nov 31, 1968

RECEIVED

MAY 21 1969

V. H. K.

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LAW OFFICES OF  
GEORGE SPIEGEL  
2600 VIRGINIA AVENUE, N.W.  
WASHINGTON, D.C. 20037

February 26, 1970

GEORGE SPIEGEL  
JAMES F. FAIRMAN, JR.

TELEPHONE 333-8860  
AREA CODE 202

Mr. Gordon M. Grant, Secretary  
Federal Power Commission  
Washington, D.C. 20426

Re: Boston Edison Company - Rate S-1  
Submission for filing dated  
January 29, 1970

Dear Mr. Secretary:

The purpose of this letter on behalf of the Municipal Light Boards and Departments of Reading and Wakefield, Massachusetts, is to comment upon the submission of proposed Rate S-1 by Boston Edison Company which would supersede the current Rates M and N-1. On February 24, 1970 we filed a Motion to Reject Submission of Rate Change in which the basis was stated for rejecting Edison's submission because of lack of supporting data required by, and patent non-compliance with, the Commission's Regulations under the Federal Power Act (Sections 35.2 and 35.5). The motion further requested that no filing date be assigned to the submission until the Commission acted upon the motion.

It is the Towns' position that in any event no filing date should be assigned until Edison has made a good faith effort to confer with the Commission's Staff and its customers on the many contractual aspects of the filing, as well as its obviously drastic change in rate-making principles which produces a 20% wholesale rate increase in a period when Edison's earnings are rising. The Commission's latest statistics show Edison to have

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earned an 8.10% rate of return in 1968, up from a corresponding 1967 level of 7.93%.<sup>\*</sup> Since no increase is proposed in Edison's retail rates, and this wholesale increase is so large as to require an increase in municipal retail rates, this proposed increase will change the balance between retail rates in adjoining territories. Reading has committed itself to a \$1,300,000 investment in interconnecting facilities in reliance upon the existing rates and terms. The Commission should not allow the unilateral rate change mechanisms of the Federal Power Act to be activated in this drastic manner without requiring a public utility first to confer, review and negotiate in good faith the many economic and contractual matters involved.

In any event, this drastic proposed change should be suspended for the full period allowed under the Act and an investigation and hearings should be ordered. Money collected under proposed Rate S-1 should be held subject to refund of the difference between the rate finally established in the Commission's decision and the amounts which would have been collected under either Rate M or Rate N-1 as applicable to the particular customer.<sup>\*\*</sup>

Each of the reasons set forth in the Towns' Motion to Reject are also reasons which would require suspension, investigation and hearing because of the following:

1. Omission of anticipated 115 kv revenues from Reading.
2. Failure to clearly and specifically set forth the rates and charges for interim 115 kv service.
3. Failure to provide most recently available financial statements.

\* / Statistics of Privately Owned Electric Utilities in the United States 1968, Class A and B Companies, FPC October 1969, p. 653.

\*\*/ Rate M is applicable and available to all customers, whether they purchase at 138 kv or 115 kv. Rate N-1 is applicable and available only to municipal utility customers who desire to purchase at 115 kv.

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February 26, 1970

4. Failure to state the accumulated depreciation by functional classification.
5. Failure to functionalize depreciation expense.
6. Edison's Test Period is stale and unreasonable and the filing otherwise fails to make a *prima facie* case.
7. Failure to state basis for rate filing.
8. Proposed restrictions are patently unlawful and unreasonable.

The discussion in the Motion to Reject is hereby incorporated herein by reference.

The proposed fuel adjustment clause should be eliminated. Edison is now backsliding. Over two years ago Edison eliminated the fuel adjustment clause from its retail rates and from its wholesale filed Rate N-1 for the reason, as stated formally to the FPC,<sup>\*</sup> that "in eliminating the fuel adjustment clause Edison follows a policy common to other utilities of not attempting to segregate out particular costs and varying rates with those costs while changes in other costs are not so recognized." This reason is applicable now with even greater force since an ever expanding portion of its energy requirements will be supplied by nuclear generation. It is apparent that Edison has a policy of manipulating its revenues by eliminating the fuel adjustment clause just before a drastic reduction in fuel costs and reimposing it just before fuel costs are expected to rise. It is basically unsound to have revenues rise and fall with one item of the cost of service, and this is demonstrated by Edison's unwillingness to keep a fuel clause adjustment in effect continuously, so that all the customers will get the benefits of fuel price reductions, as well as assuming the penalties of fuel price increases.

\* / Reading and Wakefield v. Boston Edison Company, FPC  
Docket No. E-7400; Edison Answer dated June 3, 1968, p. 25.

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The proposed rate of return of 8% is higher by far than the Commission has ever allowed to an electric utility and is obviously excessive.

The rate is incomplete because it purportedly contemplates that the customers can purchase power from other systems, including unit power entitlements, but does not provide a rate for the transmission of such power, nor the rates for such partial requirements customers. This is an immediate and pressing problem because, at this very time there are offers outstanding under which Edison's wholesale customers will have an opportunity to purchase power from New Brunswick, Vermont Yankee Nuclear Power Corporation, and Maine Yankee Atomic Power Company, commencing in 1971 and 1972. In addition, they will have an opportunity to purchase surplus pumped storage capacity from Northeast Utilities' Northfield Mountain project. Finally, the Braintree Municipal Electric Plant is planning construction of a 400 MW fossil steam plant from which a substantial amount of surplus power will be available for purchase by Edison and its customers. Thus the applicable transmission and partial requirements rates and terms need to be established now in order to complete the contemplated wholesale rate schedule.

Paragraph C (Original Sheet No. 3, Exhibit A) of Edison's General Service for Resale requires Edison's customers to furnish information to the company -- "as the Company may require" -- when they intend to resell bulk electricity. Only thereafter will Edison supply a rate schedule to be applied. Reading and Wakefield submit that such schedule should accompany this filing. Absent this knowledge being made available now, Edison is in a position at a later date to restrict what presently purports to be unrestricted service. As a practical matter, Reading and Wakefield need such information so they are able to ascertain the merits of such a bulk resale. To require the towns to give pertinent data to Edison prior to the time a rate is established would in effect permit Edison, with full knowledge of the proposed resale transaction, to formulate a rate which by design could minimize the attractiveness of such a bulk resale of electricity. To permit Edison to

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exercise this degree of control over the contracting opportunities available to its wholesale customers is unreasonable.

The Commission must review the discriminatory relationship between Edison's proposed increased wholesale rate and its unchanged industrial Rate G because of the undue discrimination between them, and particularly with regard to the ability of Edison's wholesale customers to compete for new industrial business coming into the area.

Further, the new rate design, as compared to Rate M, inhibits competition for electric heating load. Since the 1966 filing of Rate M, retail rates have been designed to reflect the incremental blocks of Rate M, but this will now need to be changed. Not only will this inhibit attraction of new business, but will create problems with existing electric heating customers.

The S-1 rate has been restructured to take away from Edison's municipal wholesale customers the declining cost feature of the M Rate which was available for load growth purchases. The impact of such a change on the towns of Reading and Wakefield needs to be investigated.

The Commission should reject Edison's efforts to collect special charges for facilities which are part of general system costs. This appears to be an additional item designed to discourage or impede customer shift to 115 kv delivery. Thus, under Paragraph H Edison would retain unilateral power to impose charges related to distribution facilities unloaded and require lump sum payments for extension facilities. This approach has substantial elements of individual ratemaking, which is now thoroughly discredited in favor of the rolled-in-cost development and the uniform tariff. For example, if individual customers are to pay for 13.8 kv facilities unloaded, they should receive credit for 13.8 kv facilities which are loaded beyond nominal capacity or are kept in operation beyond the normal service life. If the Company persists, the Commission

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should consider whether all customer rates should be fixed on the basis of the particular transmission and subtransmission facilities serving the particular customer. Alternatively, if the Company is to charge the customer for the extension of 115 kv service, it should give the customer the option of constructing the whole interconnecting facility back to Edison's backbone 115 kv system.

The proposed 70¢ surcharge, with 100% ratchet, and a 25% of load minimum, is unjust and unreasonable (Original Sheets Nos. 11 and 12, Exhibit B). Moreover, it imposes this special charge at the very time the customer is making a massive capital investment to connect to 115 kv facilities, which is of benefit to the Company. This is illustrated by Reading's 1969 experience. Because the conversion had not been accomplished in 1969, as contemplated by the parties, Edison was forced to install an additional large 115/13.8 kv transformer at its Dragon Court station to accommodate one additional 13.8 kv feeder line to Reading. In this particular case, Reading put itself in position to interconnect in 1969 as planned, but Edison was unable to perform. If, however, Edison had performed as contemplated, Reading's taking of interim 115 kv service, on a partial basis, would have relieved Edison of a major additional investment, and under such circumstances the imposition of a substantial surcharge is inappropriate. This is the usual case. The customer by picking up load at 115 kv during the interim change-over period, is freeing Edison of substantial costs. Therefore, there should be no surcharge -- the 115 kv rate should be applied to all takings during the change-over period, once a substantial portion of the load is picked up at 115 kv.

Part of the proposed increase is accomplished by the change from kw demand billing to kva billing. This is a drastic change in the manner of dealing with power factor and will require installation of equipment not shown to be necessary.

The proposed provision for Interruption of Service goes too far in seeking to relieve Edison from responsibly providing safe and reliable service. Absent "willful default"

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no liability would be imposed (Original Sheet No. 4, Exhibit A). The standard of liability should be that of negligence. Moreover, Edison should be required to develop a satisfactory load shedding program with its customers. Finally, irrespective of negligence there should be an adjustment in charges for failure by Edison to provide a utility grade service, as for example, during the current period when there are frequent voltage reductions imposed.

Analysis of the cost of service study indicates that the allocation procedures and methods are questionable, and cannot be accepted without thorough investigation and hearing.

Suspension of Edison's filing should be ordered because the grouping of customers on Statement M, Table 1, and the allocation factors involved are properly subject to inquiry, Edison's disclaimer of the data submitted notwithstanding. Likewise, the filing by Edison does not reflect efforts by the Company to replace old plant facilities with new equipment thereby improving the overall power cost situation prevailing on its system.

In any event it appears clear that the proposed rates are excessive, unduly discriminatory, and otherwise unreasonable and unlawful.

The terms of Paragraph I (Original Sheet No. 9) are unreasonable in that Edison should be required to pay interest on monies refunded to its customers following settlement of disputed charges if it is to have the initial right to demand full payment of the amounts billed notwithstanding the existence of a dispute as to payments to be made. Further Edison's customers should not be required to pay an effective rate of interest of 12% on bills over thirty days old. Such a result is clearly inequitable.

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It is requested that the restrictive terms and conditions be stricken as unreasonable and unlawful on their face, that the proposed increase in rates above the levels of Rate M and Rate N-1 be suspended for the full period available to the Commission, that investigation and hearing be required, and that the Company be required to refund all increased rates exacted above Rate M and Rate N-1 to the extent of the rates ultimately fixed by the Commission after investigation and hearing.

Respectfully submitted,



George Spiegel

Attorney for Municipal Light  
Boards and Departments of the  
Towns of Reading and Wakefield,  
Massachusetts

GS/njz

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Boston Edison Company

Docket No. E-\_\_\_\_\_

ANSWER OF BOSTON EDISON COMPANY IN OPPOSITION  
TO MOTION TO REJECT

INTRODUCTION

On February 24, 1970, the Municipal Light Boards and Departments of Reading and Wakefield, Massachusetts, ("Reading" and "Wakefield") filed a motion to reject the submission by Boston Edison ("Edison") of Rate S-1 to supersede its Rate M. Edison files this answer in opposition to the motion to reject.

From the material submitted by Edison in support of Rate S-1, it must be apparent that Edison has taken the Commission's Regulations and supplied the available information item by item. Certainly it cannot be said that Edison has "patently fail[ed] to substantially comply with the applicable requirements\* \* \*," the standard for rejection of a rate schedule filing set forth in section 35.5 of the Regulations. Edison believes the motion's unwarranted (and as pointed out herein, unfounded) shotgun attack on the filing, if accepted, would subvert the whole scheme of rate regulation established by the Federal Power Act.

The motion lists eleven specific items which it discusses individually. This answer will follow the same form. By way of introduction, the motion makes a number of other assertions which are answered in this introduction.

The motion notes that Edison's overall earnings have continued to rise through 1969. It fails to note that Edison's costs have continued to rise through 1969. Edison's previous cost of service was based on the calendar year 1965. The cost of service submitted with Rate S-1 is based on the calendar year 1968 and fully supports the increase in rates.

Erroneously postulating electric rate competition for industrial loads in Massachusetts, the motion evidently juggles "particular loads and load factors" to support a statement that Edison's industrial Rate G is lower than Rate S-1 for 13.8 kv service. Using the data from Edison FPC Form No. 1 for 1968 at page 414, lines 21 and 32, it can readily be established that such is not the case. The average rate in mills per kilowatt hour for the 738 customers on Rate G in 1968 was 15.67 mills. The average rate for the 8 customers on Rate M in 1968 was 11.14 mills. Under Rate S-1 the average rate for the 8 customers would have been 12.76 mills.

While the motion alleges that Reading and Wakefield cannot absorb an increase approaching 20 percent in Edison's wholesale power rate and must pass the increase along to their customers (a matter about which Edison currently has

no information), the motion does not point out that since wholesale power costs are only a portion of overall power costs, such increase should result in a substantially smaller percentage increase to their customers.

The motion stresses that, if any part of a rate increase is found unjustified after suspension, even though Edison would have to refund the portion found unjustified with interest, it would have had the use of the funds during the period. Edison does not believe there will be any refund required, but, if there were, surely it is more equitable that there be a refund with interest than it is to postpone acceptance of a fully supported rate filing and leave Edison without any possibility of ever collecting from its customers the revenues to which it is entitled during the period of postponement.

The following item numbers track the item numbers in the motion.

Item 1

Reading and Wakefield contend that the filing should contain a comparison of the sales and services and revenues for 115 kv delivery to Reading which is to commence at some future date. When the application for such service was made and accepted in May, 1968, Reading and Edison agreed that they would attempt to complete the interconnection in the fall of 1969 but recognized that difficulties in right-of-way acquisition might upset the schedule (see

Appendix A of the motion to reject). Edison has diligently pursued the 115 kv interconnection, even to the extent of taking its first steps toward interconnection prior to the submission of Reading's formal request. Contrary to the claim of Reading and Wakefield that Edison knows that by November 1, 1970, Reading will be purchasing at 115 kv, the service date is neither known nor can be known and is, in fact, a matter of speculation. The uncertainty was specifically noted in Edison's letter of January 29, 1970, submitting the proposed S-1 rate. Indeed, aspects relating to the acquisition of land necessary for the transmission line by Edison and by Reading are currently in litigation.

Moreover, Reading has not informed Edison as to the portion of its load which would be transferred from 14 to 115 kv service during the comparison period. It would hardly be appropriate for a public utility to make revenue comparisons in rate filings on the basis of facts which are unknown, uncertain, and speculative. In any event, Reading and Wakefield are in no position to complain, since the rate filing contains the information which, if combined with information at their disposal, would enable them to compute the cost of power under 14 or 115 kv service or various combinations of the two.

Reading and Wakefield state that the proposed S-1 rate should be compared with Edison's N-1 rate filing instead of with its M rate. The N-1 rate was not accepted by the Commission for filing, did not become effective, and was

withdrawn by the S-1 rate filing. The M rate is Edison's only all-requirements wholesale for resale rate that is in effect. Patently, when section 35.13(b)(1) of the Regulations under the Federal Power Act requires a comparison of sales and services and revenues under the proposed new rate schedule and "the rate schedule proposed to be superseded", the quoted phrase refers to the rate schedule in effect.

Moreover, section 35.13 in its entirety relates to the filing of changes in rate schedules "required to be on file with the Commission." The N-1 rate, which was submitted two years ago, has never been "required to be on file," because service under the rate could not commence even within the next 90 days (see section 35.3 of the Regulations). Certainly, if Edison had compared the proposed S-1 rate with the N-1 rate submission rather than with the M rate, the company would not be in compliance with the Regulations.

Item 2

Rate S-1 provides for firm service. Edison undertakes to supply this service consistent with accepted standards of reliability which recognize that forced outages of equipment do occur.

Reading and Wakefield claim that the term "relay" as used in item 3 on Original Sheet No. 12 of Exhibit B of the S-1 filing is so ambiguous that the provision for interim 115 kv service cannot be applied with assurance.

To "relay" is a term in common usage in New England in the electric power industry and means "to back up" facilities in an attempt to prevent interruptions of service in the event of an equipment outage. For example, if there is only one 115 kv line supplying a load, the line is not relayed and in the event of an outage of the line the customer receives no power. If the 115 kv line is backed up by other transmission lines capable of supplying the load, then the 115 kv line is "relayed" and the service is firm. The term is sometimes used in the negative form also. For example, in the Agreement between the Town of Braintree and Edison, on file with the Commission, at page 10, reference is made to "unrelayed capacity" purchases.

The terms of the S-1 rate do not contemplate unrelayed service. They provide that:

- (1) A customer receiving all firm service at 115 kv pays the basic rate.
- (2) A customer receiving all firm service at 14 or 24 kv pays the basic rate plus \$0.70 per kva per month.
- (3) During the period of changeover when firm service to the customer requires the Company to maintain 14 kv service to relay 115 kv service, or vice versa, the rate will include a charge of \$0.70 per kva for the total taken.
- (4) During a period of changeover when the customer has changed over part of its system to firm 115 service, and the remaining firm portion is supplied by the Company at 14 or 24 kv, a totalizing meter will measure the demands of both loads to which the demand charge for 115 kv service will apply and the additional charge of 70 cents per

kva per month will apply only to the 14 and 24 kv loads (minimum 25 percent).

Item 3

Reading and Wakefield state that Edison did not submit the most recently available balance sheet, income statement, and earned surplus statement pursuant to section 35.13 (b)(4)(iv)(Statements A, B, and C). The fact is that the most recently available statements in the form required by section 35.13 were submitted. Many distributions and allocations are necessary to provide Statements A, B, and C, and, in the ordinary course of business, these distributions and allocations are made at year end. For purposes of the S-1 rate filing, Edison, while not required to do so by the regulations, simulated an annual closing as of June 30, 1969, so that Statements A, B, and C could reflect a more recent period than calendar year 1968. As soon as the year end 1969 statements were available, they were forwarded to the Commission.

The income statement contained in Edison's Quarterly Dividend Report would not be acceptable as Statement B. The conventional income statements in Quarterly Dividend Reports contain summary data only, including much estimated data, for example, on local property taxes, depreciation, and maintenance. Edison's Quarterly Dividend Report does not enclose balance sheet data or earned surplus data.

Items 4 and 5

Reading and Wakefield object that Edison has not functionalized its statements of accumulated depreciation and depreciation expense but instead present total depreciation balance and expense items. Edison uses a composite depreciation rate and believes its allocations reflecting this rate are a reasonable basis for its cost of service. As the Commission is aware, some time ago Edison engaged the firm of Jackson & Moreland to conduct a complete analysis of its plant for the purpose of establishing separate depreciation accounts for the basic classes of plant. The study is not yet complete and could not be included with the S-1 rate filing, but is expected to be available in the near future. The fact that the study has not yet been completed in no way warrants the extended diatribe against Edison under these item headings.

Item 6

Reading and Wakefield characterize Edison's 1968 test year as "stale" and "unreasonable." In fact, Edison's cost of service study encompasses the most recent complete data available when it was filed. Since the filing was made in January, 1970, Edison can hardly be expected to have used test year 1969 data. The Alabama-Tennessee Natural orders cited by the motion are inapposite; in that case the Examiner, after hearing, dismissed a complaint and

the Commission a year later refused to reopen the proceedings for a new hearing. The test year was by then three years old.

Reading and Wakefield urge that Edison should have used a split year ending September 30, 1969. They say that Edison obviously had available the necessary data since it issued an income statement in its quarterly Financial Report to stockholders dated November 1, 1970. As noted previously, the data prepared quarterly are on a summary and, in some cases, estimated basis and are not designed to support a cost of service study.

Reading and Wakefield state that adjustments should be made to reflect the retirement of generating and transmission plant and its replacement with more efficient plant. In 1968, Edison retired some \$19,000,000 of plant, and these retirements are reflected in the cost of service study. In 1969, retirements of production plant amounted to \$1,330,000. Edison's total production plant as of January 1, 1969, was over \$250 million. The effect of the 1969 retirements on the cost of service would be negligible.

Reading and Wakefield urge that Edison's cost of service should be pro formed to account for economies deriving from REMVEC. REMVEC's principal advantage is in improved reliability of service. To date the operating economies to Edison have been relatively minor. They would not appreciably affect the cost of service.

Reading and Wakefield point to a growth in Edison's net operating income in the year ending September 30, 1969, over the prior comparable year. This growth was from \$31,711,844, to \$32,583,333, an amount of \$871,489 or 2.7 percent. With an annual increase of over six percent in Edison's plant account for the year 1969, it should be obvious that a 2.7 percent increase in net operating income is inadequate to maintain the rate of return. Contrary to the implication sought to be conveyed in the motion to reject, Edison has no advantage in using a 1968 test year rather than some more recent split year.

If adjustments of the type proposed by Reading and Wakefield were made to Edison's cost of service, it would be appropriate to make adjustments to reflect the severely increased costs to which Edison and other utilities, and particularly those in large metropolitan areas, have been subjected. It is believed that these adjustments would result in a showing of a greater revenue deficiency than indicated by the cost of service study.

Item 7

Edison included in its cost of service a statement that, while it had prepared the study in accordance with Commission instructions and regulations, it had reservations as to certain methods required. Reading and Wakefield improperly characterize this statement as a "repudiation" of the rate base and allowable expenses contained in the

filing and argue that Edison should state in its filing the "costs and profit Edison thinks. . . proper to collect". There is nothing in the Commission's regulations that makes it inappropriate for a utility to reserve its right to contest established methods in the event of a formal proceeding or that requires a utility to include in its filing a statement of what it believes to be the proper methods.

Item 8

Items 8 through 11 of the motion to reject complain of provisions in the S-1 schedules which deal with the resale of power purchased thereunder, the installation by the customers of generating capacity, the purchase by them of capacity from sources other than Edison, requests for partial requirements service and rates after such installation or purchase, and the termination of service. As to each of the foregoing the source of discontent must be the advance notice or information required by the company, for in each instance the right to engage in the underlying activity is affirmed in Rate S-1.

Throughout the argument in Items 8 through 11 of the motion runs the common theme that, concealed within each of the rather conventional clauses in question, there lies a monster. Suspicion abounds. We are told that the very existence of the document will enable Edison to "violate antitrust policy and law", "hold the Company's customers

captive", "inhibit promising developments in regional power supply cooperation", "prevent Edison customers from participation in purchases from the Vermont and Maine Yankee projects and thus interfere with current plans for settlement", "deprive Edison customers of . . . power from New Brunswick and Northfield Mountain", "hamper Edison customers from participating in . . . [NEPOOL]" and "hamper . . . Braintree's municipal plant."

These extreme forebodings bear no relation to reality, and the mild notice provisions from which they derive are all essential to the ability of Edison to continue to provide reliable service at reasonable rates to its customers. Be that as it may, it is quite obvious that the arguments go to the merits of the rate schedules and not to the issue of whether there has been a failure to fulfill filing requirements.

As to each of the clauses complained of, the provisions of the Federal Power Act and the Federal Power Commission's regulations, rules and procedures afford ample opportunity for review and adjudication of the merits of Rate S-1. This longstanding statutory and administrative scheme does not contemplate the circumvention of the provisions of section 205 of the Federal Power Act by the misdirected interposition into the filing process of substantive considerations. Nothing in section 35.5 of the Commission's Regulations under the Federal Power Act justifies the

rejection urged by the motion, and the consequent denial of Edison's right to the due process of the customary substantive review and adjudication, if necessary, of the merits of its Rate S-1 terms and conditions.

Edison submits that a rational analysis of the provisions assaulted in Items 8 through 11 of the motion compels the conclusion that they are fair and reasonable to all parties. The motion concedes that "Obviously, Edison is entitled to some protection from sudden increases or decreased in load by its resale customers". Whether the provisions themselves afford such protection in a reasonable or unreasonable manner is a matter for determination in the usual course of Commission review. The motion states that "there is an area for agreement if a utility is willing to bargain in good faith." Edison has in the past been willing to engage in discussions with its customers. In fact Edison repeatedly met with representatives of the movants in Massachusetts and in Washington at the offices of the Commission, at which meetings staff representatives and counsel were present, to discuss rates. That such conferences were unproductive is illustrated by the fact that to this day virtually no agreement on any issue originally in dispute has ever been reached. The many modifications of position made by Edison have been met with intransigence on the part of the movants. The motion cites with approval the recent settlement between New England Power Company and its 22 municipal utility customers. While asserting that such "amicable"

settlements will be foreclosed if Edison is permitted to file its Rate S-1, the motion neglected to state the fact that the NEPCO settlement was not reached until after pre-hearing depositions, the filing of testimony by all parties and the start of cross examination of the complainants' witnesses.

Item 9

The motion's characterization of the availability clause as preventing sales for resale is incorrect. The rate specifically provides for such sales. The requirement is that notice be given to the Company and that the Company have the ability to supply the electricity.

The addition of a block of power without sufficient notice could be beyond the capabilities of the company. Thus, notice is essential.

Moreover, Rate S-1 charges are predicated on furnishing requirements to a class of customers with certain load characteristics. A bulk purchaser from one of the movants may require only peaking capacity, only base load capacity, capacity for short term or long term, or a combination of the foregoing. As can be seen, the potential variations are numerous. As soon as the notice of intended resale is given to the company under the availability clause, Edison will undertake to supply the appropriate rate data reflecting the characteristics of the service to be provided.

Items 10 and 11

Reading and Wakefield claim that the notice provisions in regard to self-generation, outside purchase and termination are unnecessarily restrictive and are unlawful. The rate specifically provides that reasonable notice be given. The company plans to study each proposal on its merits, and would hardly be in a position to insist on a five year period if a shorter period is reasonable.

Edison under the provisions of Rate S-1 has the responsibility of providing for the electrical requirements of its S-1 customers. This responsibility involves the expenditure of considerable sums for generation, transmission and distribution facilities. As shown in Statement M of the 1968 cost study, Edison had an average electric plant in service of almost \$60,000,000 to serve the Rate M customers. Since it takes 5 to 7 years to construct a large power plant, any S-1 customer planning such a project would not find the five-year notice burdensome. It does, however, give Edison reasonable and necessary notice of a customer's future plans. Edison, without such notice, will be unable to make sound forecasts and economic studies to determine the amount of additional capacity for which it should plan. Reading and Wakefield by the end of 1970 are expected to have a combined peak demand of about 82,000 kw. The unexpected loss of a load of this magnitude could work a substantial hardship on Edison.

Rate S-1 is designed for customers purchasing total

requirements from Edison. The installation of peaking capacity in an amount of less than 20% of a customer's peak load would not, it is thought, sufficiently change the character of the customer's purchase so that a new rate would be required. In Edison's judgment, for installation of peaking capacity in an amount in excess of 20% of a customer's peak load, a new rate, reflecting the customer's new load characteristics, might be appropriate. Rather than imposing a hardship, the 20% provision enables the S-1 customer to provide for a substantial portion of its peak load without a change in the rate. Moreover, a customer will require two years to plan, design and build a peaking plant, and, therefore, a two year notice requirement would work no hardship.

The motion complains that a partial requirements rate has not been included in the S-1 schedule. In view of variations as to the type and quantities of power which might be sought under such contracts, a general partial requirements rate was not thought to be necessary or desirable. It should be noted that an expeditious procedure for accomplishing the desired result has been prescribed in Rate S-1. When a request is made, specifying the type and quantity of power to be purchased or installed and the planned date of service, the company will develop an appropriate rate.

In summary, Rate S-1 gives the customer freedom of action to plan for its electrical requirements. The

company, however, is entitled to reasonable notice of such plans in order to provide economically for its future generation, transmission and distribution requirements.

Conclusion

The motion to reject mixes substantive issues with claimed procedural irregularities. Although the substantive issues are improperly raised in such a motion, the foregoing has provided an answer to them in order to demonstrate that the wild claims and fears expressed in their support are without substance or foundation. So also the alleged procedural irregularities have been discussed and shown to fall far short of establishing that the S-1 Rate filing "patently fails to substantially comply with the applicable requirements set forth in this part [35], or the Commission's rules of practice and procedure.

WHEREFORE the motion should be denied.

Respectfully submitted,

BOSTON EDISON COMPANY

By its Attorney

s/Thomas M. Debevoise

Thomas M. Debevoise  
Debevoise & Liberman  
Shoreham Building  
Washington, D. C. 20005

Of Counsel:

James M. Carroll, Esq.  
Victor H. Kazanjian, Esq.  
Boston Edison Company  
800 Boylston Street  
Boston, Massachusetts

02199

March 6, 1970

George C. Caner, Jr.  
Ropes & Gray  
225 Franklin Street  
Boston, Massachusetts 02110

R 444

*Electric Co Inc*

Boston Edison Company  
Attention: Mr. Ralph N. Kelton  
Assistant Treasurer  
300 Boylston Street  
Boston, Massachusetts 02110

MAR 17 1970

Gentlemen:

We refer to your letter of January 29, 1970, with which you submitted for filing a revised rate for wholesale for resale service, Rate S-1, together with general terms and conditions and other related data, and your letters of January 30 and February 27, which contained certain additional material in connection with that filing. You propose that Rate S-1 supersede rate schedules now on file with this Commission. Your submittal includes a cost of service analysis in support of the increase in billings which present Rate M customers would experience under Rate S-1. The proposed effective date of Rate S-1 is April 1, 1970.

After reviewing the entire filing the staff finds the filing deficient. In order to complete your filing, the following items should be furnished:

1. Statement N (1) of Section 35.13 of the Commission's Regulations under the Federal Power Act (18 CFR 35.13) requires the submittal of the cost of certain special facilities which the filing utility considers devoted entirely to the service involved. It appears from the statements contained on pages ten and eleven of the narrative accompanying Statement M-Allocated Cost of Service in the section entitled "Allocation of Distribution Plant" and from the fact that the proposed Rate S-1 contains additives for 14 and 24 kw service and for a 4 kv transformation charge, that you consider certain special facilities devoted to the service involved. Please provide Statement N (1).

R 445

- 2 -

2. The cost-of-service analysis indicates that 1968 revenues under Rate S-1 would have amounted to \$16,937,808. What data were utilized to estimate these test-year revenues? Please furnish billing determinants.
3. The billing demand under the proposed rate is in kilovolt-amperes. For the purpose of preparing revenue comparisons required in connection with the S-1 rate filing, were kva demands metered or estimated? If estimated, please provide the basis for the estimates.
4. Paragraph H of the terms and conditions of the proposed rate indicates an additional charge "at the rate of 15% per year of the original cost of such facilities" for facilities prematurely retired or temporarily unloaded in conversion to 115,000 volt service. Please provide the derivation of the 15% charge.

In addition, the following questions should be answered to permit the staff to analyze your filing:

- (1) What is the purpose of separating municipal resale customers as a group, from private resale customers as a group in the development of your cost of service?
- (2)(a) What is the Company's representation with respect to costs to serve Norwood and Reading at 115 kv, as compared with revenues under the proposed S-1 rate for such services?  
(b) What is the cost of service versus revenue comparison for the resale customers continuing to take service at 14 kv?
- (3) The proposed rate provides for lump-sum payments for certain 115,000 volt line extensions. The information which you have submitted does not list specific payments to be made by the two customers switching to 115,000 volt service. What, if any, lump-sum payments would be required of these customers? Why would these lump-sum payments be required?
- (4) What is the reason for the proposed change from the use of kilowatt demands under Rate M to kilovolt-ampere demands under Rate S-1?

R446

- 3 -

In addition to the data filed with the Secretary, a letter and two copies of accompanying "Statement of Cost of Service-1970 General Service for Resale-Allocation Factors" were hand carried to Mr. Jack Weiss of the Commission's staff by Boston Edison's counsel on March 2, 1970. These data are required to be filed as a part of the supporting data in order to complete your rate filing. Please submit five copies for filing to the Office of the Secretary of the Commission, in accordance with Section 35.7 of the Commission's Regulations under the Federal Power Act (18 CFR 35.7) with such copies to other parties as required by Section 35.2 (d) of those Regulations (18 CFR 35.2 (d)). In order to assure proper filing and consideration of data submitted in support of your rate filings, all such data should be filed with the Office of the Secretary of the Commission in accordance with Section 1.14 of the Commission's Rules of Practice and Procedure (18 CFR 1.14).

Upon receipt of the data necessary to complete your filing, a filing date will be assigned and processing of your filing will commence.

Very truly yours,

*George M. Gross*

Secretary

BEST  
from the

R 447

Received from <sup>116</sup>  
Tom Debevoise -  
3-23-70 at  
9:50 am.

DEBEVOISE & LIBERMAN  
SHOREHAM BUILDING  
WASHINGTON, D.C. 20005  
TELEPHONE 362-2000

JAMES B. LIBERMAN  
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WILLIAM M. COHEN  
FRANK H. PEARL

March 23, 1970

Honorable Gordon L. Grant  
Secretary  
Local Power Commission  
611 G Street, N.W.  
Washington, D.C. 20428

Re: Proposed Change in Boston Edison  
Company Rate Schedule F.P.C. No. 3;  
Boston Gas Company Service

Dear Mr. Grant:

Please be advised that, in the event the Commission does not grant the waiver of notice requirements to establish an effective date of April 1, 1970, for the proposed change in the captioned rate schedule, Boston Edison Company would request that the proposed change be made effective thirty days after completion of the filing requirements, which was accomplished by letter of February 24, 1970.

Sincerely yours,

THOMAS M. DEBEVOISE

Thomas M. Debevoise  
Attorney for Boston Edison Company

cc: Boston Edison Company  
600 Brattle Street Tower  
Boston, Massachusetts 02193

/Cyrus L. Wesley, Esq.  
John S. McDonnell, III, Esq.

R466

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: Albert B. Brooke, Jr., Acting Chairman;  
Lawrence J. O'Connor, Jr., Carl E. Bagge,  
and John A. Carver, Jr.  
Boston Edison Company ) Docket No. E-7485

ORDER SUSPENDING PROPOSED CHANGE  
IN RATE SCHEDULE, DENYING REQUEST FOR WAIVER  
OF NOTICE REQUIREMENTS, AND PROVIDING FOR HEARING

(Issued March 27, 1970)

This order suspends for one day the operation of a proposed change in rate schedule, denies request to waive notice requirements, and orders a public hearing to be held on the lawfulness of the proposed change.

Boston Edison Company (Edison), a public utility subject to the jurisdiction of this Commission, on February 28, 1969, tendered for filing a notice of termination of an agreement between it and Boston Gas Company (Boston Gas) to be effective as of March 31, 1969. 1/ That filing was not completed until February 26, 1970. Edison has requested waiver of the notice requirements to permit its filing to be made effective as of April 1, 1969; but, if waiver is not granted, Edison requests that it become effective 30 days after completion of the filing requirements, i.e., March 29, 1970.

Edison serves seven all-requirements wholesale customers, including Boston Gas, under its standard Wholesale Electric Utility Rate M (Rate M). However, application of Rate M to Boston Gas is modified by special contract provisions, which result in lower charges to Boston Gas. By its filing, Edison now proposes to discontinue those contract provisions, which will result in an estimated increase in jurisdictional revenues from Boston Gas of approximately \$58,000 annually based on estimated sales for the 12-month period ending March 31, 1969.

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1/ The filing is designated as Supplement No. 3 to Edison's Rate Schedule FPC No. 3.

In support of its filing, Edison states that Rate M had been designed to reflect the fact that the annual maximum demand of the wholesale customers occurred at the time of Edison's annual peak. However, Boston Gas' annual peak did not coincide with that of Edison or the other wholesale customers. Consequently, special contract provisions were negotiated to reflect the noncoincident demand factor, which reduced Boston Gas' billing demand to 90% of its annual peak (the other wholesale customers' rate contained a 100% demand ratchet provision). Edison now asserts that this difference is no longer valid. Its present Rate M is designed on the basis of the average of monthly peaks. Edison takes the position that Boston Gas' load pattern does not differ sufficiently from the other customers to warrant special rates. Additionally, Edison states that in 1966 the special provisions were intended as temporary relief to Boston Gas to alleviate its load growth slow-down caused by a major renewal project in its service area, which condition has now been alleviated.

Boston Gas, by letters dated April 4, 1969, and February 24, 1970, and by a protest and petition filed May 14, 1969, has objected to Edison's proposed change in its rates and charges. Boston Gas asserts that the elimination of its special contract provisions is discriminatory and unlawful. It alleges that its service characteristics are sufficiently different from Edison's other wholesale customers to warrant different rates. It points to its load factor and peak periods to substantiate its claim for justification of the special contract provisions in its rate determination. In addition, Boston Gas challenges the propriety of the proposed rate level and requests this Commission to conduct an investigation of the proposed change, to deny the request for waiver of the notice requirements, and to suspend the proposed change.

Edison's assertions in support of its filing and the protest of Boston Gas raise questions which can best be resolved through a public hearing. Thus, we are ordering a hearing to determine those issues and we shall suspend the rate schedule filing in accordance with Section 205(d) of the Federal Power Act. We believe that a one-day suspension period is appropriate in this case.

The Commission further finds:

- (1) The proposed increased rates and charges have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful under the Federal Power Act.

(2) Good cause has not been shown to waive the notice requirements of Section 205(d) of the Federal Power Act and Section 35.3 of the Commission's Regulations thereunder (18 CFR 35.3).

(3) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 301, 307, 308 and 309 thereof, that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in Supplement No. 3 to Edison's Rate Schedule FPC No. 3 and that the proposed supplement be suspended and the use thereof deferred, all as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act and pursuant to the Commission's Rules of Practice and Procedure, a public hearing shall be convened to commence with a prehearing conference to be held on June 9, 1970, at 10:00 a.m. (EDT) at the offices of the Federal Power Commission in Washington, D.C., concerning the lawfulness of the rates and charges contained in Supplement No. 3 to Edison's Rate Schedule FPC No. 3.

(B) Edison's request for waiver of the notice requirements of Section 205(d) of the Federal Power Act and Section 35.3 of the Commission's Regulations thereunder (18 CFR 35.3) is denied.

(C) Pending such hearing and decision thereon, Supplement No. 3 to Edison's Rate Schedule FPC No. 3 is hereby suspended and the use thereof deferred until March 30, 1970. On that day, that supplement shall take effect in the manner prescribed by the Federal Power Act, and Edison, subject to further orders of the Commission, shall charge and collect the increased rates and charges set forth in that supplement for all power sold and delivered thereunder.

(D) Edison shall refund at such times and in such manner as may be required by final order of the Commission, the portion of the increased rates and charges found by the Commission in this proceeding not justified, together with interest at the rate of 8.0 percent per annum, from the date of payment to Edison until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rates and charges effective as of March 30,

1970, for each billing period; and shall report (original and one copy) in writing and under oath, to the Commission monthly, for each billing period, the billing determinants of electric energy sold and delivered under the above-described supplement, and the revenues resulting therefrom as computed under the rates in effect immediately prior to March 30, 1970, and under the rates and charges made effective by this order, together with the differences in the revenues so computed.

(E) Unless otherwise ordered by the Commission, Edison shall not change the terms or provisions of Supplement No. 3 to its Rate Schedule FPC No. 3 until this proceeding has been terminated or until the period of suspension has expired.

(F) Notices of intervention and petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C. 20426, on or before April 17, 1970, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.37). Answers to those petitions may be filed on or before May 1, 1970.

By the Commission.

( S E A L )

Gordon M. Grant,  
Secretary.

R 470

DEBEVOISE & LIBERMAN  
 SHOREHAM BUILDING, SUITE 1000  
 WASHINGTON, D.C. 20005  
 TELEPHONE 383-2060

MAR 30 1970 | 47 PII '70

JAMES B. LIBERMAN  
 THOMAS M. DEBEVOISE  
 FREDRICK M. HUBBACH  
 GEORGE F. BRUGG  
 WILLIAM J. MADDEN, JR.  
 WILLIAM M. COHEN  
 FRANK M. PEARL

FEDERAL POWER COMMISSION

March 30, 1970

Honorable Gordon M. Grant  
 Secretary  
 Federal Power Commission  
 441 G Street, N.W.  
 Washington, D.C. 20426

Re: Boston Edison Company Rate S-1 Filing

Dear Mr. Grant:

The Boston Edison Company regret that your letter of March 17, 1970, was delayed in transit, perhaps because of the postal situation, but it is filing today the materials and information specified therein concerning the captioned filing. While the company believes that the materials and information earlier supplied by the company had already satisfied the rate schedule filing requirement of the Commission's Rule and Regulation, in accordance with longstanding and recent Commission precedent, if after examining the materials and information being filed today you do not agree, the company requests that a filing date now be assigned and that the rate schedule be permitted to become effective thirty days thereafter.

In regard to the materials on allocation factor, which your letter notes the undersigned counsel hand carried to the Commission, please be advised that these materials were not considered by the company as a required part of the filing, "the principal determinant used for allocation purposes" having been supplied as part of the cost of service on January 29, 1970. Under the same procedures heretofore utilized in connection with other company filings, these work papers were furnished to Staff as soon as they were compiled, merely to be helpful. For the same reason, copies were made and forwarded to each of the customers. In connection with the S-1 Rate Filing, it should be noted that the company, without request, also supplied each customer the reporting data submitted to the Commission on January 29, 1970, even though not required to do so by Section 35.2(d) of the Regulation.

R471

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Honorable Gordon M. Grant  
March 30, 1970  
Page 2

It would be appreciated if a copy of written requests for information be forwarded to the under-signed counsel. The company stands ready to respond to all oral and written Staff requests covering the Rate S-1 Filing as expeditiously as possible.

Very truly yours,

Thomas M. Debevoise  
Attorney for  
BOSTON EDISON COMPANY

R 472

DEBEVOISE & LIBERMAN  
SHOREHAM BUILDING  
WASHINGTON, D.C. 20005

TELEPHONE 393-2080

JAMES B. LIBERMAN  
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WILLIAM J. MADDEN, JR.  
WILLIAM M. COMEN  
FRANKLIN PEARL

March 30, 1970

Honorable Gordon M. Grant  
Secretary  
Federal Power Commission  
441 G Street, N. W.  
Washington, D. C. 20426

Re: Boston Edison Company  
Rate S-1 Filing

Dear Mr. Grant:

Five copies of this letter and the following materials and information are submitted in connection with the captioned filing:

1. Statement N (1). The company does not consider that it has "special facilities" within the meaning of Section 35.13 (b)(4)(iv) Statement N (1), nor is any specific facility charged against any specific customer in the 1968 cost of service. While there are some specific cables that are today used only in connection with service to specific customers, these cables are not classified as "special facilities" and are not segregated from similar cables in the company's distribution plant accounts. Pages ten and eleven of the narrative accompanying Statement M in the company's 1968 cost of service, filed on January 29, 1970, explains the basis of allocation of distribution plant to the wholesale customers from the company's book figures. Pages ten and eleven of the information on allocations submitted on March 2, 1970 contain a breakdown of the allocated costs to each wholesale customer.

Enclosed herewith, however, is a Statement N (1) containing four tables which breakdown the company's 1968 cost of service by voltage level, showing the additional

Honorable Gordon M. Grant  
 March 30, 1970  
 Page 2

costs of service as the voltage level is stepped down from the company's power supply voltage level.

2. The 1968 estimated test-year revenues were computed by applying rate S-1 to the billing demands and demands for 14 kv and 24 kv service presented in Statement M - Table 6, Sheet 11 of the company's cost of service filed on January 29, 1970 and to the megawatthour sales summarized on lines 8 through 11 of Statement M - Table 5, with one exception. The billing demands for that part of the service to Concord which is at 4 kv and which results in test-year revenues of \$24, 815 are not included in Table 6. The Concord 4 kv billing demands were: January--4, 580 kva and December--4, 764 kva, the total demand for 4 kv service (100% ratchet) being  $(4, 580 \times 11) + 4, 764 = 55, 144$  kva.

The computation of the estimated revenues using the above data can be made as follows:

Demand Charge: $(\$1.95 \times 3, 122, 905) + (\$3, 000 \times 12 \times 8)$	=	\$ 6, 377, 664
Energy: $(\$5.40 \times 1, 331, 400) + (\$0.40 \times 3, 122, 905)$	=	8, 438, 722
14 and 24 kv Service: $(\$0.70 \times 3, 066, 582)$	=	2, 146, 607
4 kv Service: $(\$0.45 \times 55, 144)$	=	<u>24, 815</u>
		\$16, 987, 808

3. In preparing the revenue comparisons, actual metered kva demands were used for periods prior to January 1970; for subsequent periods, each customer's kva demand was estimated on the basis of its rate of growth, as determined from trend curves and information supplied by the customer concerning unusual anticipated loads.
4. The figure of 15% per year of original cost used in paragraph H of the terms and conditions of Rate S-1 has an historical basis and has not yet been changed to reflect the increases in cost of capital and local taxes. A detailed analysis of its derivation was requested by Staff and supplied on February 7,

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1968, consisting of 5 pages and 13 tables. Subsequently a more simplified formulation was also supplied, as follows:

	<u>Property</u>	
	<u>Levelized Depreciation</u>	<u>Nondepreciable</u>
<b>Return</b>	7.00	7.00
<b>Sinking Fund Deprec.</b>	.50	
<b>Local Taxes</b>	3.50	3.50
<b>Income Tax with Liberalized Deprec.</b>	<u>2.50</u>	<u>4.00</u>
	13.50	14.50
<b>Average of above</b>	14.00%	
<b>O &amp; M</b>	<u>1.00</u>	
	15.00%	

The following further information may be helpful in connection with the filing:

(1) The separate presentation of municipal resale customers and private resale customers in the 1968 cost of service study follows the pattern of the company's 1965 cost of service study and gives those interested in analyzing the study one of the steps in the development of the total costs to be allocated to the entire class of resale customers. The classification played no role in rate design, the costs of all customers being totaled for this purpose, but since the information was a step in the development of total costs and had not been questioned by the Staff in the 1965 study, it was again presented in the 1968 study.

(2)(a) The company has not made a separate study in connection with the filing of the costs to serve Norwood and

Honorable Gordon M. Grant  
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Reading in the future at 115 kv, but certain information based upon 1968 figures can be derived from the material submitted. The 1968 cost of service has been broken down for service at each voltage level, including 115 kv, on the Statement N (1) submitted herewith. That shows 1968 cost of 115 kv power supply to all the resale customers to be \$15, 698, 670. Applying Rate S-1 to actual 1968 115 kv service to the entire class results in computed revenue of \$14, 816, 386. This revenue figure, of course, would not change if Norwood and Reading had been taking service at 115 kv. Further it can be computed that, if Norwood in 1968 had been served at 115 kv instead of 14 kv, it would have been billed \$1, 396, 785 instead of \$1, 625, 542. For Reading the same computation shows \$2, 394, 489 instead of \$2, 858, 301.

(b) A cost of service versus revenue comparison for 14 kv customers once Norwood and Reading take service at 115 kv in the future can be computed as if the switch over had occurred in 1968 from data submitted. The 1968 average added cost of 14 kv facilities amounted to \$23.63 per average kva of all the customers served at that voltage. Upon removal of the 14 kv facilities used to serve Norwood and Reading and the Norwood and Reading 14 kv loads, the average cost in 1968 would have amounted to \$23.15 per average kva, which means that there would have been about a 2% effect upon the added cost versus added revenue relationship for 14 kv service. The effect upon a total cost versus total revenue relationship for the remaining 14 kv customers would be approximately 0.3%.

(3) Rate S-1 provides for an initial lump-sum payment to the company if the company's costs associated with a new 115 kv line extension to serve a customer desiring 115 kv service exceeds \$5 per kva of the customer's demand. The charge is derived as follows: As shown on Statement M, Table 2, Sheet 1, Column H, lines 29 and 30, the cost of 115 kv tap lines included in the 1968 cost study amounted to \$284, 115 for non-depreciable plant and \$951, 167 for depreciable plant, for a total of \$1, 235, 282. As shown on Statement M, Table 6, Sheet 11, the total kva months on an 80% ratchet were 3, 122, 905, which, divided by 12, amounts

Honorable Gordon M. Grant  
March 30, 1970  
Page 5

to an average demand of 260,000 kva. The average cost is then \$4.75 per kva, which is the amount included in the rate for these lines. An average cost of \$5 per kva was used to represent a fair cost to be absorbed by the company for any added 115 kv tap lines under Rate S-1. Under the rate, any payment made by the customer for costs in excess of \$5 per kva of demand at the time of interconnection would be refunded at the rate of \$5 per kva of annual increase in peak demand on the company.

The total final costs of the company's 115 kv extensions to Norwood and Reading are not known since the facilities are not completed. On February 12, 1970, the company estimated for the Massachusetts Department of Public Utilities that its cost of the new line to connect at the point selected by Reading (instead of at the company's existing 115 kv lines in Wilmington) would be \$506,000. If this figure holds, on the basis of a 1970 estimated peak demand on the company of 63,000 kva, Reading would be required to pay in \$191,000. Once its demands on the company reached 101,000 kva, all of this sum would be refunded. The estimate of the Norwood line furnished the Massachusetts Department of Public Utilities in February, 1969 was \$197,500. At an estimated 1971 peak load of 34,000 kva, Norwood would be required to pay in \$27,500, which would be returned upon load growth placing demands on the company of 39,500 kva.

(4) Rate S-1 proposes to charge on the basis of kva demands instead of kw demands, which were used in Rate M. This will provide an incentive to customers to improve their power factor. Reading, for instance, has a good power factor, one of the reasons undoubtedly being that it charges its large customers on a kva demand basis.

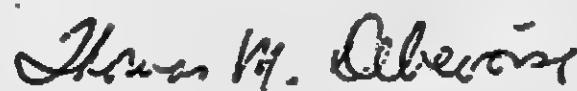
At the present time the average annual power factor of the resale customers varies from 82 percent to 94 percent. When the loads of these customers were small, the impact of low power factor on the Edison system was small. But the total demands of these customers in December, 1970 are estimated at 329,114 kilowatts or 350,189 kva, which is a substantial load on the company's system.

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March 30, 1970  
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Electric equipment is rated in kva. It is the maximum kva which determines the amount of capacity necessary and hence the cost required to serve a customer, not the kw. It should be noted that a customer can improve its power factor by the expenditure of relatively small amounts of money in capacitor installations.

The company also submits herewith a 40-page compilation which applies the allocation factors used in the company's 1968 cost of service study. This compilation has already been furnished to each of the resale customers, including the extra copies requested. With its exception, a copy of this letter and enclosed materials are also being sent today to the resale customers.

Very truly yours,



Thomas M. Debevoise

Enclosures

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Allocation Factor S  
Allocation of Depreciation Reserve

	Depreciable Plant	Less Contributions	Balance	Percent
Territorial Load	\$602,216,472	\$ 2,241,040	\$599,975,432	100.00
Municipal 14 KV	28,899,580	-	28,899,580	4.82
Private - 14 KV	23,296,231	-	23,296,231	3.88
Private - 115 KV	6,246,850	-	6,246,850	1.04
Ultimate Consumers	543,773,811	2,241,040	541,332.771	90.26

Allocation of Depreciation Reserve to Utilities Other Than Rate M

	Unit Sales	Station 402	Braintree	Total
<u>Unit Sales</u>				
New Boston and K Street				
31.69% x 3,935,167	\$1,247,054	\$	\$	
Other substations				
35.287% x 248,438	87,666			
General Plant				
35.287% x 291,616	102,903			
<u>Station 402</u>				
Total excluding General Plant				
1 1/2% x 1,518,916		22,784		
35.287% x 17,487 (General Plant)		6,171		
<u>Braintree</u>				
Total depreciable plant	519,847			
Less contributions	<u>102,918</u>			
Balance	416,929			
35.287% x 416,929				
<u>Total accrued depreciation</u>	<u>\$1,437,623</u>	<u>\$28,955</u>	<u>147,122</u>	<u>\$1,613,700</u>

	Depreciable Plant	Depreciation Reserve
Total	\$627,171,799	\$199,009,963
Less: Contributions	2,343,958	
New Boston and K Street	70,555,952	3,935,167
Station 402	1,518,916	22,784
Balance	552,753,473	195,052,512
		35.287%

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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Boston Edison Company )

Docket No. \_\_\_\_\_

OFFICE OF THE SECRETARY  
FILED  
APR 22 4 39 PM '70  
FEDERAL POWER COMMISSION

MOTION TO REJECT RATE CHANGE  
SUBMISSION ON SERVICE GROUNDS

The Municipal Light Boards and Departments of Reading and Wakefield, Massachusetts, through their attorney, hereby move the Commission: (i) to reject the rate change submission of Boston Edison Company dated January 29, 1970 (proposed Rate S-1) on the grounds that Edison is not furnishing a utility grade of electric service; or alternatively (ii) to conduct such staff studies and formal investigation and impose such conditions as may be necessary prior to assigning a filing date to said rate submission and its acceptance for filing, on the grounds that Edison is failing to provide an adequate public utility grade of service, as follows:

a. Voltage reductions, on a system-wide basis, have become frequent and substantial, and appear to be on the increase.

b. Due to power supply and transmission problems Edison has satisfied its customers, including the distributor

customers Reading and Wakefield municipal electric plants, that it does not expect to be able to provide reliable, uninterrupted service in the near future and is limiting the connection of new loads.

c. Edison has failed to proceed seasonably to interconnect at 115 kv with Reading, although such interconnection is essential to assure that Reading's expected winter 1970-71 peak of 64,000 kw, while Reading has spent or committed some \$1,300,000 to be able to interconnect at the agreed upon delivery point.

#### A. INTRODUCTION

Edison is a prosperous electric utility. Its rate of return on rate base actually earned has risen from 7.07% to 8.10% in 1968, second highest in all New England. In 1969, its earnings per share increased from a 1968 level of \$2.90 per share (before non-recurring tax saving) to \$3.10, and in 1970 the quarterly dividends were increased from 52¢ to 56¢

Reading and Wakefield are municipal electric plants which purchase their total requirements from Edison, currently

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\* / FPC Statistics of Privately Owned Electric Utilities, 1966, 1967, 1968, Section VIII.

under Rate M. The wholesale rates paid by Reading and Wakefield are more than double the national average of those paid by municipal purchasers. <sup>\*/</sup> Wakefield has an expected peak of some 20,000 kw and serves only within its own community; Reading, however, serves in addition to Reading the Towns of Wilmington and North Reading, and part of Lynnfield. It has a considerable industrial load, and competes with Boston Edison for the attraction of desirable industrial customers into its service territory.

Reading has an expected winter 1970-71 peak of 64,000 kw, approximately equal to the existing capacity of the eight 13.8 kv feeders through which it now receives power from Edison. This is inadequate because there is no spare feeder capacity to firm up the connection.

Reading has spent and committed \$1.3 million to build its 115 kv interconnecting facility to the agreed upon boundary delivery point. Reading has been seeking this 115 kv interconnection since 1966. In 1968, Edison

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<sup>\*/</sup> FPC Statistics of Publicly Owned Electric Utilities in the United States 1968, pp. xii-xiii. The national average is 5.0 mills/kwh. Edison's filing shows for Wakefield, year ending March 30, 1970, an average of 11.0 mills per kwh under existing rate M to be increased to 13.0 mills under Rate S-1.

agreed that the interconnection should be made by November 1969. Reading could have met this date, but Edison was unable to perform. Thus in 1969, Reading was forced to spend some \$80,000 for an otherwise unnecessary 13.8 kv feeder, and Edison likewise made wasteful expenditures by temporarily installing an 18 MVA 115/13.8 kv transformer and related equipment.

Patchwork will not suffice -- Edison is unable to assure performance of its obligation to interconnect at 115 kv and Reading therefore finds itself with a \$1.3 million 115 kv bridge to nowhere and unable to assure its ability to meet peak load. Although this sad state of affairs is the result of Edison's non-performance, Edison nonetheless seeks to exact a 20% rate increase from Reading on the theory that Edison is supplying adequate 13.8 kv service, and that Reading is not entitled to realize any benefit from its \$1.3 million investment in 115 kv service.

Moreover, aside from the question of Reading's interconnection, Edison is also failing to supply a public utility grade of service in view of the frequent and substantial voltage reductions, as well as its anticipation of service interruptions across a large part of its system.

B. VOLTAGE REDUCTIONS ARE SUBSTANTIAL,  
FREQUENT AND INCREASING

1. System voltage reductions have become substantial and frequent, and appear to be on the increase. These reductions occurred on 39 days during the year ended March 31, 1970, for a total duration of 183.5 hours, as shown on the Reading logs. These are listed in Appendix A hereto. There were 75-3/4 hours in which the reduction was 5%, and 107-3/4 hours of 2% reduction.

2. Their frequency is increasing. For example, in March 1969, there were reductions on 3 days for a total duration of 7.5 hours; in March 1970 there were 11 reduction days with 68.50 reduction hours. There were 22 week days in March 1970 and on one-half of these days voltage reductions were made. In 1969, there were no voltage reductions between March 10th and June 29th; in 1970 the period from March 13th through March 31st has already seen 9 reduction days with 48.50 reduction hours. Since Spring set in March 21, 1970 there have been 5 reduction days with 27.5 reduction hours. The weather has been mild and Spring is the off-peak season; nevertheless the voltage reductions are frequent and substantial. Edison's 1969 Report to Stockholders confirms

these voltage reductions but characterizes them as

"occasional voltage reductions during winter and summer," \*

but the above record shows that these are now occurring during the Spring as well.

3. These voltage reductions have significant adverse effects on the operation of customer equipment and appliances. Industrial customers, particularly with precision equipment, are complaining. Moreover, they signal the fact that the reserves backing up Edison service are inadequate, and therefore there is insufficient protection against widespread service interruptions. March 1970 has been mild, and March is a relatively low load season.

\* / Boston Edison Company 1969 Report.

"Big 11 Powerloop Projects Delayed" Several new transmission links and one major generating unit on the New England grid were completed in 1969. Still, progress on the Big 11 Plus power project was slowed considerably by a series of prolonged construction delays affecting several plants which are to be part of this interconnection.

As a result, New England was left with less reserve capacity than planned. This, together with accelerated load growth and above normal unscheduled outages of major units, caused Edison and other utilities in the six-state area to resort to occasional voltage reductions during both the winter and summer periods in order to maintain generation reserves. The situation should be alleviated in 1970 by the addition of the 640,000 kw

Millstone Point #1 Unit in Connecticut, additional new peaking turbines and the Maine-New Brunswick interconnection, both previously mentioned. Four major units are scheduled for completion in 1971 including Pilgrim Station." (page 8)

NOTE: Northeast Utilities' Millstone No. 1 is more than a year behind schedule and is now expected to go into commercial operation in late summer 1970.

Yet Edison, and its interconnected companies, do not have sufficient reserves to carry that load at design voltage, but, having brought on all available reserves, still must ration power through the mechanism of reduced voltage.

During voltage reduction, there is little reserve left to protect the service. With voltage reduced, and one more forced outage of a major generating unit, load shedding and blackouts will occur.

C. MAJOR SERVICE INTERRUPTIONS ARE NOW PREDICTED.

1. Edison officials are predicting major service interruptions during the year 1970. Reading and Wakefield have been formally notified by Edison that ". . . the Company may be forced to interrupt electrical service to some of the communities under certain load and contingency conditions." The letter states that Reading and Wakefield are on a list of 36 communities as to which "service interruptions in parts of and, in some cases all of the . . . communities can be expected . . ." The letter points out that ". . . the Company, where pertinent, plans to refuse to connect new electrical loads, and may find it necessary

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\* / Boston Edison letter of March 19, 1970 to 36 Massachusetts communities, reproduced as Appendix B hereto.

to ask large industrial customers to limit or curtail their operations . . . ." The letter urges the communities ". . . to review your local procedures particularly with respect to essential municipal services."

2. Edison attributes this service problem to its inability to build 2900 feet of line in the Town of Sherborn (Appendix B hereto). In view of the frequent, substantial system-wide voltage reductions, however, it would appear service interruptions, load shedding and black-outs could well result from deterioration of the power supply, irrespective of the Sherborn line. The Selectmen of Sherborn in reply to Edison's charges state that Edison acted illegally in constructing 21 steel towers, ranging from 120 to 162 feet in height prior to issuance of a certificate by the Massachusetts Department of Utilities and town street-crossing permits, and that it has been violating the law by transmitting energy through the line. <sup>\*</sup> The Selectmen state that, to Sherborn's offer to negotiate, "Edison's only reply has been to threaten to write a letter to its customers placing the blame on Sherborn -- a threat which it has now carried out."

\* / Sherborn's letter of March 23, 1970 is attached hereto as Appendix C.

Sherborn's letter concludes:

"The present situation is not fairly attributable to the Town of Sherborn. It is attributable to a series of basic mistakes made by the Edison Company a persistent refusal on the part of that Company to negotiate even the most modest request made by the Town which has suffered the most from those mistakes."

Other towns have risen to Sherborn's support. For example, the Sudbury Selectmen are reported to have "termed the Edison announcement 'Blackout Blackmail'".<sup>\*</sup> The Town of Millis likewise concluded that the Edison letter constituted "blackmail".<sup>\*\*</sup>

Further, in this climate of deteriorating public relations and public confidence, Edison can expect increasing resistance to its transmission line projects which presumably will intensify the problem of deteriorating service.

**D. EDISON'S FAILURE TO COMMIT ITSELF  
TO A READING INTERCONNECTION CREATES  
FEAR OF SERVICE BREAKDOWN AND LOSS  
OF \$1.3 MILLION INVESTMENT.**

1. Reading's jeopardy is compounded by Edison's unwillingness to commit itself to the 115 kv interconnection

<sup>\*</sup>/ Belmont Citizen, April 4, 1970, Appendix D.

<sup>\*\*</sup>/ Natick Suburban Press and Recorder, March 26, 1970, Appendix E hereto.

which the parties had agreed upon for operation by November 1969. Reading has invested or committed some \$1.3 million, cleared the right-of-way to the delivery point near the Town border, could have completed the connection in 1969, and is now prepared to complete by August 1970.

2. Since 1966 Reading has been seeking a commitment from Edison to interconnect at 115 kv near its load center. Studies were made and there was mutual agreement among representatives that Reading should shift from 13.8 kv to 115 kv delivery and that the interconnection should be made along the Reading-Woburn boundary near Reading's Lowell Street station. Indeed, in response to Reading's request for 115 kv service, Edison, in a letter of June 23, 1967, proposed a 115 kv interconnection at that point by November 1969, and estimated the cost of the line and right-of-way would be a modest \$160,000. While there was agreement on the interconnection, Reading sought to negotiate some of the individual terms of the Edison proposal, some of which Reading considered in violation of the antitrust laws. Edison refused to meet for such discussions, and it failed to purchase the indicated

right-of-way at that time, when it could have been purchased cheaply through large industrial tracts and without street crossings.

3. Edison's ultimate response was to file with the Massachusetts Department of Public Utilities on November 22, 1967 its proposed High Tension Wholesale Municipal Utility Rate N, without prior consultation with its customers. This was at a higher rate than that proposed June 23, 1967, and contained specific conditions which Reading believed to be unlawfully restrictive under the antitrust laws. Included was an application form which Edison demanded be accepted before Edison would move toward acquisition of right-of-way on its side of the line. Reading refused to sign the application in the form demanded because, in the opinion of counsel, it would constitute participation by Reading in an agreement violating the antitrust laws. In addition, Reading believed that the Federal Power Commission, not the Massachusetts DPU, had jurisdiction, and would not sign for this reason. Rate N was finally filed with the FPC on December 21, 1967, reserving, however, the right to contest the FPC's jurisdiction. Meetings were held under the aegis of the FPC staff, during which Edison indicated that its line extension cost in Woburn had

increased from the earlier availability at \$160,000 to \$251,000. Meetings were under way in an effort to resolve problems, when unilaterally Edison requested withdrawal of Rate N and made another filing on March 11, 1968 -- its High-Tension Wholesale Municipal Utility Rate N-1 with both the FPC and the Massachusetts DPU. Rate N-1 was higher than Rate N, and the wholesale municipal customers were once again punished for failing to unconditionally accept the earlier rate. Once again, Reading was confronted, as a condition of obtaining the Company's commitment for the 115 kv interconnection, with Edison's demand to execute an application form which would make Reading a party to an agreement considered unlawful under the antitrust laws.

4. Agreement was finally reached on the form of application for 115 kv service, and this was executed between the parties as of May 31, 1968. In Edison's covering letter of May 31, 1968 it stated it has "already taken steps toward an interconnection with a prospective 115 kv line to be built by Reading. Edison will carry these plans forward to the best of its ability so as to be in a position to interconnect its line with Reading's by the Fall of 1969."

R 557

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5. This letter also pointed out the disturbing fact that Edison had now, due to its inaction, lost its opportunity to purchase the right-of-way at a modest price, that the land was being sold to new interests, and that the potential buyers were seeking no less than \$600,000 for the right-of-way.

This letter also states that ". . . . Edison is accepting this application intending to supply service under \* Rate N-1 . . . ." This conforms to Edison's statement to the FPC in its filing letter of March 11, 1968 requesting an immediate effective date ". . . . so that any customers desiring to elect 115,000 volt service have a basis for \*\* making such election."

6. Reading, on June 21, 1968, replied to Edison's letter of May 31, 1968 pointing out that Edison has an unconditional obligation to extend its 115 kv lines and inter-connect with Reading, and to provide reliable and adequate

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\* / Boston Edison letter of May 31, 1968 to counsel for Reading, Appendix F hereto.

\*\* / Edison's filing letter of March 15, 1968 to the Mass. DPU is to like effect:

"Although it will not be possible for any customer to take service hereunder prior to the Fall of 1969, because of the time required for construction of facilities, the rate is being filed at this time so that all parties can evaluate the economies of 115 kv service."

service which requires interconnection by November 1969.

Reading also rejected any obligation to reimburse Edison for the increase in estimated costs of the right-of-way because these resulted from Edison's dilatory negligence in failing to acquire the right-of-way when it was obviously necessary and could be purchased cheaply. Moreover, Reading reserved its rights to damages resulting from delay "caused by Edison's insistence upon Reading's execution of an unlawfully restrictive application."

Since that time Edison has not begun construction of its 115 kv interconnecting line. Reading has been told that Edison has its road crossing permits, and is pursuing eminent domain proceedings before the Massachusetts DPU. Due to Edison's failure to construct by November 1969 Edison was forced to install a wasteful temporary 115/13.8 kv transformer, in order to increase the 115 kv/13.8 kv transformer capacity at Dragon Court to serve Reading's 1969-70 winter load. Similarly, Reading was forced to spend approximately \$80,000 for an additional 13.8 kv supply feeder. Neither of these expenditures would have been necessary if Edison had met the November 1969 date.

\* / Reading's counsel letter of June 21, 1968 to Edison's counsel, Appendix G.

The situation today is approaching a crisis.

Reading's anticipated 1970-71 winter load is 64,000 kw while the current 13.8 kv supply capacity is perhaps 66,000 kw, without provision for spare capacity. The firm capacity is thus approximately 58,000 kw, with a single feeder down. Not only has Edison not begun construction, but it stated to the Commission on March 6, 1970:

"Contrary to the claim of Reading and Wakefield that Edison knows that by November 1, 1970 Reading will be purchasing at 115 kv, the service date is neither known nor can be known and \*/ is, in fact, a matter of speculation."

As of today, Reading still does not have any commitment that Edison will interconnect at 115 kv.

Edison thus leaves one of its biggest customers in the following status:

(a) It is "a matter of speculation" whether Edison will be able to supply all the capacity required for Reading's load;

(b) It is a "matter of speculation" whether Reading's \$1.3 million investment will result in a bridge to nowhere. Reading has cleared a right-of-way to the delivery point, but Edison has done nothing on its side

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\*/ Boston Edison Answer filed March 6, 1970 in instant proceeding, page 4, emphasis added.

of the point;

(c) Nonetheless, Edison would not seek to supersede Rate N-1 which it specifically filed and put into effect for the express purpose of enabling Reading and others to have an economic basis for evaluating the investment in interconnecting facilities, thus increasing Reading's payment by some \$550,000 per year, approximately a 20% increase; and

(d) Finally, despite Edison's failure to assure the 115 kv interconnection, despite the concomitant failure to assure adequate delivery capacity, despite Reading's \$1.3 million investment in interconnection 115 kv facilities rendered useless by Edison's nonperformance, Edison would insist upon collecting from Reading its 13.8 kv surcharge of 70¢/kwh/v month. This surcharge produces additional revenue of some \$450,000, as a reward to Edison for failing to make the agreed upon 115 kv interconnection with Reading. Meanwhile, the filed and effective Rate N-1, which would provide substantial savings at 115 kv as compared to Rate S-1, would be superseded, although Edison had solemnly assured two regulatory agencies that Rate S-1 was filed so

as to enable them to evaluate the economics of 115 kv service. Edison's failure to provide adequate data with which to compare the N-1 and S-1 rates causes the exact amount of savings to remain undetermined.

Reading is now purchasing at 13.8 kv under Rate M. When the 115 kv connection is made it is currently entitled to shift to currently effective Rate N-1 and thereby reduce its power costs as an offset to its increased cost of receiving delivery at 115 kv. The exact amount of this currently available savings is not known because Edison, contrary to the Commission's regulations has not made any revenue comparisons between Rate S-1 and Rate N-1. If Edison's proposed Rate S-1 is allowed to become effective, and if Reading were treated as a 115 kv customer, there would be a significant increase in charges; but the biggest part of this increase suffered by Reading is the imposition of the 13.8 kv surcharge.

#### E. CONCLUSION

When service is inadequate the utility is not entitled to increase its rates. The Federal Power Act contemplates abundant, adequate, sufficient, just and reasonable electric service. The rate change provisions

of Section 205 may be invoked only where a public utility grade of service is provided. This necessarily follows from the Act's language. Section 205(d) relates to changes in rate by a "public utility" implies that the service involved is a public utility service, in other words, that it is of a public utility grade. Moreover, any changes in "service" requires appropriate filing under Section 205(d), and Edison has made no filing authorizing it to reduce the quality of its service.

Edison's service does not meet public utility standards.

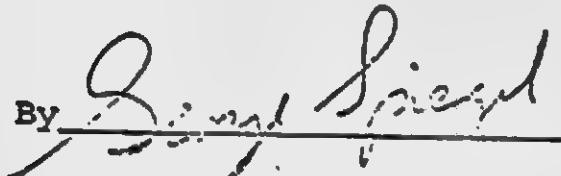
It is therefore necessary that the Commission reject the proposed Rate S-1 and leave Edison's wholesale customers with the alternatives of Rate M and Rate N-1. In any event no filing should be assigned until the Commission's staff has reviewed and investigated as necessary the current grade of service being offered by Edison, and until appropriate conditions are imposed correcting the service problem. During this period, the matter should be taken up with the Massachusetts Department of Public Utilities and others, to afford opportunity to file complaints under Section 207 of the Act.

WHEREFORE, the undersigned prays that the Commission reject the proposed rate change, or alternatively that it instruct its staff to review, inquire into, and enter into investigation as necessary with regard to the electric service being provided by Edison; that notice be given to the Massachusetts Department of Public Utilities and others concerning this matter with opportunity to file complaint and to participate in such matter; that the Commission's assignment of a filing date and acceptance for filing of Boston Edison Company's submission be deferred until the Commission has acted upon this motion, and that the Commission take such other and further action as may be proper and meet.

Respectfully submitted,

Municipal Light Boards and  
Departments of the Towns of  
Reading and Wakefield,  
Massachusetts

By



Law Offices of:

George Spiegel, Esq.  
2600 Virginia Avenue, N. W.  
Washington, D. C. 20037

April 22, 1970

**READING  
VOLTAGE REDUCTION**

<u>Date</u>	<u>Time</u>	<u>Percentage</u>	<u>Number of Hours</u>
			<u>@5%</u> <u>@2%</u>
3/3/69	9:00 a.m. - 12:00 noon	5	3
3/7/69	11:00 a.m. - 2:30 p.m.	5	2 1/2
3/10/69	11:00 a.m. - 1:00 p.m.	5	2
6/30/69	11:00 a.m. - 2:00 p.m.	2	3
7/16/69	11:00 a.m. - 5:30 p.m.	5	6 1/2
7/17/69	9:00 a.m. - 10:00 a.m.	2	1
	10:00 a.m. - 4:00 p.m.	5	6
7/18/69	11:00 a.m. - 3:00 p.m.	2	4
7/22/69	10:00 a.m. - 3:00 p.m.	2	5
8/4/69	8:00 a.m. - 12:00 noon	2	4
	12:00 noon - 4:00 p.m.	5	4
8/6/69	9:00 a.m. - 5:30 p.m.	2	8 1/2
8/7/69	10:00 a.m. - 3:00 p.m.	2	5
8/11/69	11:00 a.m. - 3:00 p.m.	2	4
8/14/69	10:00 a.m. - 3:00 p.m.	2	5
8/15/69	10:00 a.m. - 4:00 p.m.	5	6
8/18/69	10:00 a.m. - 3:00 p.m.	5	5
8/25/69	10:00 a.m. - 3:00 p.m.	2	5
7/6/69	9:30 a.m. - 5:45 p.m.	2	5
9/8/69	10:00 a.m. - 3:00 p.m.	5	8 1/4
11/12/69	5:00 p.m. - 6:00 p.m.	5	5
11/13/69	5:00 p.m. - 5:30 p.m.	5	1
11/21/69	4:00 p.m. - 9:30 p.m.	2	1/2
12/11/69	4:30 p.m. - 5:45 p.m.	5	5 1/2
1/13/70	4:45 p.m. - 5:45 p.m.	5	3/4
1/14/70	5:30 p.m. - 6:30 p.m.	5	1
1/15/70	4:15 p.m. - 5:30 p.m.	2	1
1/19/70	4:30 p.m. - 6:05 p.m.	5	1 1/4
1/26/70	4:30 p.m. - 6:30 p.m.	5	1 1/2
2/4/70	4:30 p.m. - 7:15 p.m.	5	2
2/12/70	4:30 p.m. - 6:15 p.m.	5	2 3/4
2/16/70	5:00 p.m. - 6:30 p.m.	5	1 3/4
2/17/70	9:15 a.m. - 11:50 a.m.	2	1 1/2
	11:50 a.m. - 6:30 p.m.	5	2 1/2
3/2/70	8:45 a.m. - 4:00 p.m.	2	6 3/4
	4:00 p.m. - 7:30 p.m.	5	7 1/4
3/9/70	8:07 a.m. - 1:15 p.m.	5	3 1/2
	1:15 p.m. - 5:30 p.m.	5	5
	5:30 p.m. - 6:45 p.m.	2	4 1/4
3/13/70	9:00 a.m. - 1:15 p.m.	5	1 1/4
	1:15 p.m. - 4:15 p.m.	2	4 1/4
			3

565

150

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<u>Date</u>	<u>Time</u>	<u>Percentage</u>	<u>Number of Hours</u>
			@5%      @2%
3/16/70	10:15 a.m. - 6:45 p.m.	2	
3/17/70	10:00 a.m. - 11:00 a.m.	2	8 1/2
3/18/70	1:00 p.m. - 4:00 p.m.	2	1
3/23/70	8:00 a.m. - 9:20 a.m.	2	3
	9:20 a.m. - 12:17 p.m.	5	1 1/4
3/25/70	10:15 a.m. - 2:09 p.m.	2	3
3/26/70	10:00 a.m. - 12:00 p.m.	2	3 3/4
3/30/70	4:45 p.m. - 11:00 p.m.	2	2
3/31/70	8:35 a.m. - 7:45 p.m.	5	6 1/4
			<u>11 1/4</u>
Total - 42 days			83 1/4      107 3/4

BOSTON EDISON COMPANY  
200 BOYLSTON STREET  
BOSTON, MASSACHUSETTS 02109

JOHN L. SULLIVAN  
Vice President

March 19, 1970

Mr. John F. Scudella  
Chairman - Board of Selectmen  
Wakefield, Massachusetts

Dear Mr. Scudella:

Ever since 1965 Boston Edison Company has been endeavoring to construct and operate a 230,000 volt overhead transmission line from Medway to Sudbury on an existing right of way which has been dedicated to transmission line use for many years. The proposed line is required to continue to meet the ever-growing electrical needs of our customers in your community and in neighboring communities. No one has ever seriously challenged the need for this line, an independent review has confirmed that it is necessary and construction has been completed from Medway to the Natick-Framingham town line.

However, opponents of the line have raised several legal questions and have been successful in obtaining a temporary court injunction against further construction. The Supreme Judicial Court has recently instructed the Company to obtain new access crossing permissions from the seven towns involved for the necessary construction, as well as certain further administrative approvals by the Department of Public Utilities.

On three days in December of 1969, the Company met in the office of the Department of Public Utilities with representatives of four towns which had opposed the line. At these meetings the Company made substantial compromises. At the conclusion of the meetings it was our understanding that the representatives of the towns, recognizing the urgency, had agreed to act promptly one way or the other on our requests for access crossing permissions.

In January of this year the Company filed all of the required petitions for such crossings locations in seven towns. The Boards of Selectmen in the towns of Framingham, Holliston, Medway, Natick, Sudbury and Wayland have acted to grant the necessary permissions. The Sherborn Selectmen, however, have to date refused to take any action whatsoever, either favorable or unfavorable. Even an unfavorable decision would allow the regulatory process to be initiated. In the absence of action on the part of Sherborn, the Company is obliged by law to wait until the middle of April before this matter can be presented to the Department of Public Utilities for its review. This means that we are presently unable to proceed to obtain the remaining administrative approvals which the Court has said are required.

Of most immediate import to you and your community, it is now quite apparent that we shall be unable to build 2900 feet of line which was designed

BEST COPY  
from the original

- 2 -

and intended to protect the continued supply of electricity to all of our customers for the complete summer peak period. This construction can be completed in twelve weeks after all approvals are received. Until this line is completed, the Company may be forced to interrupt electrical service to some of the communities it serves under certain load and emergency conditions.

Not all communities would be affected at one time but depending on the frequency and duration of the emergency, service interruptions in parts of and, in some cases all of the following communities can be expected: Boston, Allston, Ashland, Bedford, Bellegrove, Brookline, Cambridge, Carlisle, Concord, Dedham, Dover, Framingham, Holliston, Hopkinton, Lexington, Lincoln, Maynard, Medfield, Medway, Millis, Milton, Natick, Needham, Newton, Needham, Sherborn, Stoneham, Sudbury, Wakefield, Waltham, Wayland, West Roxbury, Westwood, Winchester, and Woburn.

A majority of the affected communities are in the western and northern portions of our system.

A further consequence of Sherborn's situation is that the Company, where pertinent, plans to refuse to connect new electrical loads, and may find it necessary to ask large industrial customers to limit or curtail their operations until the line is built.

All of us at Boston Edison are deeply concerned over this situation and will continue to do everything possible to maintain continuity of electrical service to your community during this critical summer period. However, I would urge you to review your local procedures particularly with respect to essential municipal services.

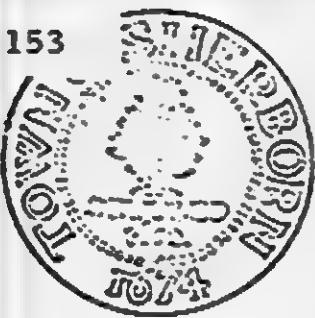
If you desire any assistance in making emergency arrangements, please call our District Manager.

Very truly yours,



John J. Sullivan

c: Chairman, Massachusetts Department of Public Utilities  
Chairman, Federal Power Commission

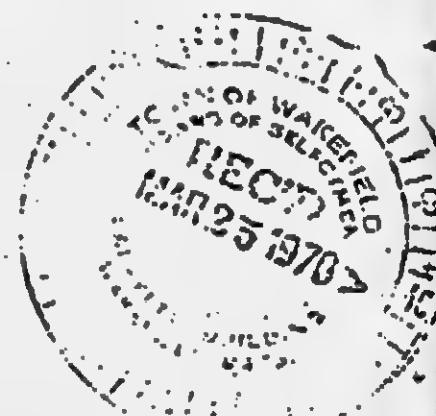


R 568  
OFFICE OF  
BOARD OF SELECTMEN  
SHERBORN, MASS.

3/25/70  
RECD  
REC'D  
Mar 25 1970

March 23, 1970

Board of Selectmen  
Lafayette Street  
Wakefield, Massachusetts 01880



Gentlemen:

This refers to a letter dated March 19, 1970 addressed to you by John L. Sullivan, Vice President of the Boston Edison Company, seeking to place upon the Town of Sherborn sole responsibility for Edison's delay in completing a 230,000 volt overhead transmission line, with possible adverse consequences in your community. That letter is inaccurate and unfair, and we feel obliged to set the record straight and place the responsibility where it belongs.

Some years ago Edison announced its intention of constructing this line from Medway to Sudbury on Eiffel type steel towers on a right of way owned by Edison and already occupied by various other transmission lines. The towns of Framingham, Sherborn, Sudbury and Wayland made known their objections in 1967. Three of these towns saved their rights by action before the Department of Public Utilities, but because the Town of Sherborn failed to do so Edison proceeded to construct the proposed line through that town and erected a total of 21 steel towers ranging from 120 to 162 feet in height, notwithstanding persistent assertions by the other towns that this construction was illegal unless a certificate of convenience and necessity was first obtained from the Department of Public Utilities, and unless street-crossing permits were obtained from the several towns.

The Edison Company, instead of complying with statutory requirements as the towns said it should, chose to take a gamble that the court would not require such compliance. In 1969 court proceedings ensued in which all four towns participated, culminating in a decision by our Supreme Judicial Court that the towns were right and that Edison should have obtained a certificate of convenience and necessity and should have obtained street crossing permits before constructing the line. The statute makes it clear

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BOARD OF SELECTMEN  
SHERBORN, MASS.

March 23, 1970

Page 2

that until such street crossing permits have been obtained, the company may construct a transmission line but may not transmit energy through it. In fact, the Edison Company has been transmitting energy through the line in violation of this statute for many months.

As a result of this decision, Edison changed its proposal so that it would erect a single circuit line on wooden H-frames in the towns of Framingham, Wayland and Sudbury, rather than the highly objectionable steel lattice-type towers which had already been constructed in Sherborn. In addition, in order to obtain street crossing permits in these towns, Edison made substantial further concessions.

The company has made no commitment whatsoever in the Town of Sherborn other than to screen a portion of the highway so that certain of the towers would be less visible. Sherborn has asked Edison to remove not more than six of the towers and replace them with steel tapered poles, and has attempted to show, through a qualified expert, that this can reasonably be done. Edison has refused to remove even one of the existing towers and, until it was suggested by the Chairman of the DPU, refused to have its engineers even meet with Sherborn's consultant. Sherborn has made it plain to the Edison representatives that it is prepared to further negotiate its request, but Edison's only reply has been to threaten to write a letter to its customers placing the blame on Sherborn - a threat which it has now carried out.

The present situation is not fairly attributable to the Town of Sherborn. It is attributable to a series of basic mistakes made by the Edison Company and to a persistent refusal on the part of that company to negotiate even the most modest request made by the town which has suffered the most from those mistakes.

Sincerely yours,

BOARD OF SELECTMEN  
Town of Sherborn

WILLIAM F. SAUNDERS  
ROBERT W. BROOKS  
J. ROBERT SHAUGHNESSY

### Blackout Blackmail

SUDBURY - The Board of Selectmen has directed Executive Secretary Floyd Stiles to send a letter to the Boston Edison Co. strongly objecting to the Company's recent statement which places the blame for a predicted power shortage on the Town of

• Sherborn. John Tait called this action "despicable."

Edison had stated that because they had not received the rights to cross through the town, several towns including Bedford, Burlington, Carlisle, Concord, Lexington, Lincoln and Sudbury, may face a loss of power during summer peak load periods.

Sherborn is the only one of seven towns involved in the Medway to Sudbury line controversy which has not yet granted the street crossing rights necessitated by the recent Supreme Court decision.

The Sudbury Selectmen, who recently granted those rights, termed the Edison announcement "Blackout Blackmail."

&lt; 571

## Bloemen Charges Edison With 'Blackmail'

MILLIS -- Is the town being blackmailed? Was a citizen threatened by a police officer? Has the town passed a law restricting the freedom of its citizens? These were the subjects the Selectmen were faced with Tuesday night as they mulled over the variety of questions presented to them.

### Interrupt Service?

Boston Edison Company's Vice-president, John L. Sullivan, sent a letter to the Selectmen explaining that their installation of overhead powerlines from Sudbury to Medway would be delayed due to friction by the Sherborn Selectmen in granting permits to cross roads in their town. As a result the electrical company claims that "they may be forced to interrupt electrical service to some of the communities it serves under certain load and contingency conditions." Such an interruption in service would occur during the "summer peak load period."

Selectmen weighed the problems a lack of electricity would present, such as inability to operate pumps; fire protection; and facilities for the elderly in rest homes.

It was decided that emergency services could be provided.

### It's Blackmail!

Town Counsel John St. Cyr suggested that the letter be turned over to the state Department of Public Utilities as he felt it constituted "blackmail." The Selectmen agreed to do so.

Mr. J.A. Bloemen of Orchard Street, appeared before the board to complain on several points. First, he wished to repeat his concern expressed at Town Meeting about a police officer repeating a statement he heard Bloemen make in a private conversation. The officer said to Bloemen "so you want to have a secret ballot on my salary." Bloemen says that at first he was intimidated, and said "Do I have to worry whenever I drive through town?" The officer replied "Oh, no, I'm not that kind of a man."

Bloemen told the Selectmen that he felt that this was improper behavior on the part of the officer.

He also complained that a salaried employee such as the Police Chief should not be paid for fighting fires. Since he is the Chief 24 hours a day, he should not be

paid additional money for extra duty. Chairman Donald M. Kuhn asked if Bloemen were just singling out the police department employees or if his attitude extended to all employees of the town? Bloemen replied that his philosophy applied to all salaried employees.

### Bloemen Continues

He also was concerned about Article 63 in the town meeting warrant, which the town passed, requiring anyone "soliciting" to register with the police department. He felt that the word "solicit" could be interpreted to apply to such activities as a child's requesting another to play with him; or any request one person would make to another. He said "I feel this is an invasion of my liberty."

Chairman Kuhn said that he felt Bloemen had taken a very stringent approach to the article; and that the article had been prepared to protect the people. He added that the only real way to find out if Bloemen were right would be for the issue to go to the courts.

Town Counsel offered his opinion that if the issue were to go to the courts, the judge would be concerned with the intent of the law in the thinking of the voters. He added that this article would still have to be approved by the State Attorney General before it could become law.

In other business, the Selectmen voted to renew John J. Lyden's auctioneer license. The request of the Little League to hold a parade on May 2; to solicit for funds on April 11 or April 12 in the event of inclement weather; and to sell refreshments at their games were granted.

R 572

APPENDIX F

BOSTON EDISON COMPANY  
 EXECUTIVE OFFICES  
 803 Boylston Street  
 BOSTON, MASSACHUSETTS 02159

VICTOR H. KAZANJIAN  
 ASSISTANT GENERAL COUNSEL

May 31, 1968

George Spiegel, Esquire  
 2600 Virginia Avenue, N.W.  
 Washington, D.C. 20037

Dear Mr. Spiegel:

Boston Edison Company acknowledges receipt with your letter of May 17, 1968 to Mr. Debevoise of an application by the Town of Reading for 115 kV service, dated May 6, 1968.

Edison is enclosing its acceptance of the application.

In anticipation of submission of an application by Reading, Edison has already taken steps towards an interconnection with a prospective 115 kV line to be built by Reading. Edison will carry these plans forward to the best of its ability so as to be in a position to interconnect its line with Reading's by the fall of 1969. With respect to right of way problems, Stauffer Chemical has advised us that it has decided to sell all its property and, under the circumstances, has referred us to potential buyers, one of which has told us that he would sell the right of way to us for not less than \$600,000. What effect this development will have on our progress remains to be seen. We are actively pursuing the matter and are inviting Mr. Gau to attend conferences which may be held so that he may keep abreast of the situation first hand.

As anticipated in your letter of May 17, 1968, Edison is accepting this application intending to supply service under Rate N-1, that being its only rate which deals with the problem of the cost of construction of an interconnection, reflects costs of supplying all a customer's needs at 115 kV and contains the protective features to which the Company is entitled in view of the type of service and size of loads anticipated. It is our view that Edison's Rate M is not available in this situation. It is a higher rate than Rate N-1. Moreover, as you have been advised, Edison has under consideration plans to file changes of its M Rate, one of which would limit the rate to the 13.8 kV service for which it was originally designed should it be deemed necessary that the position be established in that fashion.

Very truly yours,

BOSTON EDISON COMPANY

By Victor H. Kazanjian  
 Victor H. Kazanjian

*L 573*

GEORGE SPIEGEL  
ATTORNEY AT LAW

June 21, 1968

TELEPHONE  
FEDERAL 3-0060

2600 VIRGINIA AVENUE, N.W.  
WASHINGTON, D.C. 20037

Victor H. Kazanjian, Esq.  
Assistant General Counsel  
Boston Edison Company  
800 Boylston Street  
Boston, Massachusetts 02199

Dear Mr. Kazanjian:

This acknowledges Boston Edison Company's letter of May 31, 1968, forwarding a fully executed copy of Reading's Application to Boston Edison Company for 115,000 Volt Service, dated May 6, 1968, and May 31, 1968. Because of the press of other matters, I have not been able to respond earlier.

The Application unconditionally obligates Edison to extend its 115 kv lines to a point at the intersection of the Wilmington, Woburn and Reading town lines and to supply service to Reading Municipal Light Department at that voltage under rate schedules applicable to 115 kv service at the time service is commenced.

Your letter states that:

"Edison will carry these plans forward to the best of its ability so as to be in a position to interconnect its line with Reading's by the fall of 1969."

It should be made clear that Edison has an unconditional obligation to provide reliable and adequate wholesale service to Reading Municipal Light Department and the Department must hold Edison strictly accountable for any failure to discharge this obligation in a reasonable manner if Edison is not in fact in a position to interconnect by the fall of 1969.

It has been clear in discussions, studies and correspondence since 1966: (i) that the extension of Edison's 115 kv lines to the interconnection

Victor H. Kazanjian, Esq.

- 2 -

June 21, 1968

point described in the Application was the most economical means of providing 115 kv service to Reading; and (ii) that 115 kv service to Reading was, by far, the most economic means of meeting the Department's 1969 fall and winter peak requirements. The alternative of expanding the 115/13.8 kv facilities at Dragon Court clearly would cost Edison many times more, and was recognized by everyone as the less economical alternative.

The Department's representatives have many time requested and urged Edison to go forward with its necessary preparations for the 1969 115 kv interconnection. As you know, the largest part of the expenditures for the 115 kv interconnection is being made by Reading, and Reading has not waited for a signed agreement before moving ahead with its program.

Edison's letter of May 31, 1968, makes reference to negotiating difficulties with Stauffer Chemical Company concerning right-of-way problems. Edison, of course, recognizes that each party is responsible for solving the right-of-way problems on its side of the interconnection. The Department has not burdened Edison with Department's right-of-way problems, and it assumes that Edison is capable of obtaining this relatively short right-of-way in Woburn in an expeditious and prudent manner without assistance from the Department. In any event, Edison has not heeded in the past the Department's urging to acquire the right-of-way when it was evidently available at a relatively low cost, and it would therefore now prefer to leave the problem in Edison's experienced hands.

In Edison's letter of June 21, 1967, to Mr. Spurr, Chairman of the Reading Municipal Light Board, it was estimated that Edison's total cost of the 115 kv line extension through Woburn would be \$160,000, including right-of-way, line construction, and all equipment.

There was enclosed with Edison's letter of January 22, 1968, to Miss Strelbel of the Federal Power Commission, a tabulation that the total cost of Edison's extension had increased to \$251,000, of which \$61,000 was the value of the right-of-way.

R 575

Victor H. Kazanjian, Esq.

- 3 -

June 21, 1968

Edison's letter of May 31, 1968, refers to discussions in which a figure of \$600,000 was mentioned for this same right-of-way. We do not understand how a claimed value can be so out of line with Edison's earlier estimates, and we assume that Edison will be able to acquire the right-of-way at a cost close to its own estimate of value. If, however, a drastic change in value has, in fact, occurred during the period in which Edison has delayed making its acquisition, any resultant increase in cost would have to be borne by Edison alone, since it is most unlikely that the regulatory agencies would allow in rate base, costs which reflect demonstrably imprudent acquisition delays.

Edison must also recognize that the execution of the Application in its present form is a vindication of Reading's position in refusing to execute any application forms containing, or incorporating by reference, unduly restrictive conditions. The Reading Board had been advised that these restrictive conditions appeared to be unlawfully in restraint of trade. Edison inserted a provision of this type in its June 21, 1967, rate proposal, and it has continued to insist on such provisions until it recently agreed to execute the Application in an unrestricted form. Under this view of the matter, Edison will be liable for any damages resulting from delay caused by Edison's insistence upon Reading's execution of an unlawfully restrictive application.

We are hopeful that the Federal Power Commission will shortly set the matter of Boston Edison's wholesale rates down for hearing so that the parties will have available the Commission's decision by the time the interconnection is made in 1969. This should resolve the problems to which Edison alludes in the last paragraph of its letter of May 31, 1968, as to whether Rate M applies to 115 kv service. It should also resolve the question of whether a discount should be included in Rate M to reflect Edison's savings if service is provided at 115 kv. It will be helpful if Edison will join with Reading in pressing for expedited proceedings in the matter.

Very truly yours,

George Spiegel  
Attorney for Reading Municipal  
Light Department

GS/njz

cc: Federal Power Commission  
(Attention: Assistant General Counsel, Electric)  
Municipal Light Board, Town of

R 579

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Boston Edison Company

Docket No. \_\_\_\_\_

ERRATA SHEET FOR  
READING/WAKEFIELD MOTION TO REJECT  
RATE CHANGE SUBMISSION ON SERVICE  
 GROUNDS FILED APRIL 22, 1970

<u>Page</u>	<u>Location</u>	<u>Change</u>
1	Last line	"satisfied" to "notified"
2	3rd line, para. A	add "in 1964" after "7.07%"
15	1st line following quotation at middle of page	following "commitment" insert "as to the date"
16	1st line, subpara. (c)	"not" to "now"
16	7th line, subpara. (d)	"70¢/kwh/month" to "70¢/kva/month"
16	last line	"Rate S-1" to "Rate N-1"
18	bottom para., 4th line	insert "date" after "no filing"

Respectfully submitted,

Municipal Light Boards and Departments  
of the Towns of Reading and  
Wakefield, Massachusetts

By James F. Fairman, Jr.  
James F. Fairman, Jr.

Law Offices:

George Spiegel  
2600 Virginia Avenue, N. W.  
Washington, D. C. 20037

April 27, 1970

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;  
Lawrence J. O'Connor, Jr., Carl E. Bagge,  
and John A. Carver, Jr.

Municipal Light Boards of )	
Reading and Wakefield, Massachusetts, )	Docket No. E-7400
Complainants, )	
v. )	
Boston Edison Company, )	
Respondent )	
Norwood Municipal Light Department, )	
Norwood, Massachusetts, )	Docket No. E-7517
Complainant, )	
v. )	
Boston Edison Company, )	
Respondent )	
Boston Edison Company )	Docket Nos. E-7485
	and E-7533

ORDER DENYING MOTION TO REJECT SUBMISSION  
OF RATE CHANGE, SUSPENDING PROPOSED CHANGE  
IN RATE SCHEDULES, INSTITUTING INVESTIGATION,  
CONSOLIDATING PROCEEDING, PROVIDING FOR  
HEARING, AND GRANTING MOTION TO WITHDRAW  
MOTION TO REVIEW BOSTON EDISON COMPANY'S SERVICE

(Issued April 29, 1970)

This order denies a motion to reject proposed change in rates schedules, suspends for one day proposed rate schedule changes, institutes investigation of rates, charges, terms and conditions of jurisdictional rate schedules, provides for hearing, consolidates proceedings for purposes of hearing and decision, and grants a motion to withdraw a

Docket Nos. E-7400, E-7517, E-7485  
and E-7533

- 2 -

previously filed motion requesting review of electric service rendered by a public utility.

Boston Edison Company (Edison), a public utility subject to the jurisdiction of this Commission, on January 29, 1970, tendered for filing its rate schedule, General Service For Resale, consisting of (1) general terms and conditions, (2) rate for all requirements service, and (3) definition and special conditions of all requirements service. 1/ In its tender, Edison stated that Rate S-1 was to supersede its Wholesale Electric Utility Rate M (Rate M) and to supersede its submission on March 11, 1968, of High-Tension Wholesale Municipal Utility Rate N-1, General Terms and Conditions for Sales for Resale, Miscellaneous Charges Nos. 1 and 2 (Rate N-1). Edison requested that Rate S-1 be made effective April 1, 1970. However, Edison's tender was deficient under our Regulations and was not completed until March 30, 1970. At that time, Edison requested that Rate S-1 be made effective 30 days after completion of filing, i.e., April 30, 1970. By its Rate S-1 filing, Edison proposes to increase its annual billings by approximately \$2,733,000 or 15.7% based upon the 12 month period immediately following the proposed effective date.

In support of its filing, Edison states that the continuing inflation of costs has made it necessary to increase its charges under Rate M and the proposed Rate N-1. Additionally, Edison asserts that Rate S-1 is designed to distribute its costs of service more equitably between resale customers and ultimate consumers and to provide revenues commensurate with its requirements and responsibilities. Edison further states that the new rate schedule is designed to eliminate to some extent the objections raised by some of its customers to its proposed Rate N-1.

1/ The tender is designated in Appendix A attached hereto and is the subject of the proceeding in Docket No. E-7533. For brevity, this filing shall be referred to as "Rate S-1" throughout this order.

Docket Nos.. E-7400, E-7517, E-7485  
and E-7533

- 3 -

Protests and objections to Rate S-1 were filed by Boston Gas Company (Boston Gas) and the Towns of Concord, Norwood, Wellesley, Reading, and Wakefield, Massachusetts. <sup>2/</sup> In general, the protesting customers request suspension and investigation of Rate S-1 and question certain items in the cost study submitted by Edison including, among other things, the use of an 8% rate of return, 10% Federal income tax surcharge, allocation of costs between wholesale and retail customers and the inclusion of a fuel clause. Additionally, the municipal customers question the validity of the proposed general terms and conditions for resale service and the definition and conditions of all-requirements service alleging that the notice requirement on installing generating equipment or purchasing from other sources is unduly restrictive. Further, the municipal customers contend that the proposed increase in charges to them cannot be absorbed and will have to be passed on to their retail customers.

On February 24, 1970, the Towns of Reading and Wakefield filed a motion requesting rejection of Rate S-1 on the basis of the initial incompleteness of Edison's filing under our Regulations. On March 6, 1970, Edison filed its answer in opposition to that motion asserting that it had complied with our Regulations. As noted above, Edison's filing at first was deficient, but was completed on March 30, 1970. Thus, we will deny the motion to reject.

Edison's contentions in support of its filing and the protest of its customers raise questions which can best be resolved through a public hearing. Thus, we are ordering a hearing to resolve those questions and we shall suspend for one day the rate schedule filing in Docket No. E-7533 in accordance with Section 205(d) of the Federal Power Act.

<sup>2/</sup> New England Power Company stated that the new rate should be permitted to go into effect without suspension reserving its right, however, to participate in any future proceedings if formal investigation is ordered by the Commission.

Docket Nos. E-7400, E-7517, E-7485  
and E-7533

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Rate N-1 was submitted for filing by Edison on March 11, 1968, for 115 kv service to its five municipal wholesale customers. 3/ At present, Edison's only wholesale rate applicable to 115 kv service is its Rate M, under which Edison presently provides 13.8 kv service to its wholesale customers as well as 115 kv service to part of the requirements of New England Power Company. 4/

The proceeding in Docket No. E-7400 involves a filing by the Municipal Light Boards of the Towns of Reading and Wakefield, Massachusetts, on March 13, 1968, of an application and complaint against Edison, their supplier of power. Complainants request an interconnection order under Section 202(b) and 202(c) 5/ of the Act, assertion of Commission jurisdiction over Edison's rates and charges for sales of energy to the

3/ That submittal is designated as follows:

<u>Customer</u>	<u>Designation</u>
Concord, Massachusetts	- Rate Schedule FPC No. 36
Norwood, Massachusetts	Rate Schedule FPC No. 37
Reading, Massachusetts	Rate Schedule FPC No. 38
Wakefield, Massachusetts	Rate Schedule FPC No. 39
Wellesley, Massachusetts	Rate Schedule FPC No. 40

With that submittal, Edison notified the Commission that it was withdrawing Rate N and that Rate N-1 was submitted in lieu thereof. Rate N was submitted for filing on December 21, 1967, and has not been formally acted upon by the Commission.

- 4/ Rate M service is rendered to municipals under Edison's Rate Schedule FPC Nos. 13 through 17; to New England Power Company under Rate Schedule FPC No. 10; and to Boston Gas Company under Rate Schedule FPC No. 3.
- 5/ The issue raised by the request for interconnection under Section 202(c) was resolved by the parties in the manner set forth in Complainants' letter of November 26, 1968, to the Secretary of this Commission.

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and E-7533

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Towns 6/, and an investigation into Edison's rates, charges, classifications, practices, efficiencies, regulations, rules, contracts, and services under Rate M and the proposed Rate N-1.

Several conferences were held between the parties and our staff before the filing of Edison's answer to the complaint. No settlement was reached on the rate level of the present 13.8 kv and proposed 115 kv service nor on the terms and condition of service. However, it was agreed that Reading would apply for, and Edison would arrange for, a 115 kv interconnection at a point mutually agreed upon. The application has been filed by Reading and accepted by Edison. It is anticipated that 115 kv service to Reading will commence by November, 1970.

The complaint requests an investigation into the lawfulness of Rate M and Rate N-1. Complainants allege that Edison's rates are unreasonable due to, among other things, excessively high administrative and general expenses, as well as the incurrence of excessive costs allegedly due to imprudent operation of obsolete plants. They also object to numerous terms and conditions in those rate schedules including, among other things, Edison's alleged distinction between municipally-owned and investor-owned distributors, restraints on their purchase and resale of energy, removal of the fuel adjustment clause, and imposition of certain Miscellaneous Charges.

Edison, in its answer, asserts that its rate level and the terms and conditions for 115 kv service are just, reasonable and lawful. Edison further states that any investigation or hearing on its wholesale rates should be deferred until actual experience has been obtained on 115 kv service to Reading. We disagree. Several of the terms and conditions opposed by these Complainants relate to the conditions under which 115 kv service is to be made available. Accordingly, any delay in ascertaining

6/ Edison, in its answer to the complaint, stated that it will not contest this Commission's jurisdiction over its sales to the Towns.

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and E-7533

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the proper terms and conditions of 115 kv service (whether under Rate M, N-1, S-1, or any deviation from those rate schedules) would be both unwarranted and unreasonable.

The proceeding in Docket No. E-7517 involves a complaint filed on December 23, 1969, by the Norwood Municipal Light Department, Town of Norwood, Massachusetts. In that complaint, Norwood requests the Commission to institute a formal investigation into Edison's jurisdictional rates, charges, classifications, practices, and services for 115 kv service and to fix the same. Additionally, Norwood requests the Commission to order Edison to account for amounts collected under that service and to refund any portion found unjustified with interest.

In support of its complaint, Norwood states that it has entered into an agreement with Edison for 115 kv service and has sold bonds in the amount of \$2,300,000, solicited bids, and executed contracts for construction of its portion of the facilities necessary for making the interconnection. Norwood states that under the normal course of events it would have its 115 kv facilities ready by May of 1971, but, as Edison has known for some time, the existing 13.8 kv facilities are inadequate to meet Norwood's anticipated peaks for the summer of 1970. Norwood states that Edison asserted that installation of additional 13.8 kv facilities to meet the anticipated load was too expensive and insisted that Norwood should meet those requirements by early construction of the new 115 kv line. Based on an understanding that Edison would provide it with a 115 kv transformer, Norwood agreed to an early construction date of its 115 kv lines. However, under this arrangement, Edison seeks to charge its Rate M rates for this service, but Norwood wants service under Rate N-1, which Edison would agree to if Norwood would rent two 115 kv transformers from it. Norwood states that, under Edison's proposal to rent transformers, it will lose the savings of Rate N-1 despite its substantial investment in the early construction of those lines and the savings to Edison by this early construction. Additionally, Norwood alleges that certain terms and provisions of Rate N-1 are unjust and unreasonable as to it.

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and E-7533

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On February 16, 1970, Edison filed its answer to Norwood's complaint stating that its proposed Rate N-1 was submitted to this Commission but was not accepted for filing and has not become effective. Edison further states that, on January 29, 1970, Edison withdrew Rate N-1 when it filed its proposed Rate S-1 amending Rate M. Edison states that Rate S-1 is now applicable to all of its total requirements wholesale for resale customers and contains provisions for both high and low tension service. Edison further denies responsibility for the delay by Norwood in obtaining 115 kv transformer for its 115 kv service. Thus, Edison asserts that, under its proposal to let Norwood use its transformer, it will in essence be rendering low tension service for which it must be properly compensated until Norwood's facilities will be ready in May, 1971. Edison further denies that it realizes any savings on Norwood's early construction of these facilities and denies that it insisted on such early construction.

The complaints and answers filed in Docket Nos. E-7400 and E-7517 raise questions of fact and law which can best be resolved by an investigation and a full public hearing; wherein all parties may produce witnesses and adduce evidence on the record before an Examiner of this Commission. Accordingly, we are ordering investigations and hearings on those complaints.

In Docket No. E-7485, Edison tendered for filing a notice of termination of an agreement between it and Boston Gas which was suspended and a hearing ordered thereon by our order issued March 27, 1970. The proposed notice of termination seeks to eliminate the special provisions of Rate M that was applied to Boston Gas. By its elimination, Boston Gas will receive service under Rate M unmodified or Rate S-1, when that rate becomes effective. Boston Gas, however, has challenged the validity of Edison's filing of both the notice of termination in Docket No. E-7485 and Rate S-1 in Docket No. E-7533.

The complaints filed in Docket Nos. E-7400 and E-7517, the suspension proceeding in Docket No. E-7485, and the filing in Docket No. E-7533 contain common questions of law and fact that can best be resolved in a consolidated hearing. Accordingly,

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and E-7533

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we are consolidating the proceedings in Docket Nos. E-7400, E-7517, E-7485, and E-7533 for purposes of hearing and decision.

In the consolidated proceeding, the Examiner should permit evidence and legal argument on the issue of the status of Rate N-1. In its Rate S-1 filing, Edison stated that Rate N-1 was thereby superseded. In its answer to Norwood's complaint, Edison stated that its Rate N-1 submittal was withdrawn by its Rate S-1 filing. On the other hand, Norwood and Reading have filed for high-tension service under Rate N-1 and have issued bonds on that basis. Rate N-1 is a lower rate than Rate M, and, consequently, Rate N-1, if effective, may be relevant to contentions involving refunds; if any, which might be ordered. Thus the issue of the status of Rate N-1 should be probed and a decision rendered thereon.

On March 27, 1970, Reading and Wakefield filed a motion requesting this Commission to investigate the alleged deterioration of electric service supplied by Edison. On March 31, 1970, those Towns filed a motion to withdraw their motion of March 27, 1970, without prejudice to their refiling a revised motion. We shall grant the motion to withdraw. On April 22, 1970, Reading and Wakefield filed a revised motion to reject the proffered rate submittal restating the general position of the municipalities. We do not reject Edison's filing. To the extent that the motion seeks other relief, it will be considered by the Commission following opportunity for answer by Edison.

The Commission further finds:

(1) Good cause exists to deny the motion filed by Reading and Wakefield on February 24, 1970, requesting rejection of Edison's submittal of Rate S-1 and to accept for filing Rate S-1.

(2) The proposed increased rates and charges contained in Rate S-1 have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful under the Federal Power Act.

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and E-7533

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(3) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 301, 307, 308 and 309 thereof, that the Commission enter upon a hearing concerning the lawfulness of the rates and charges and other provisions contained in Edison's proposed Rate S-1 and that Rate S-1 be suspended and the use thereof deferred as herein-after ordered.

(4) It is necessary and appropriate for the purposes of the Federal Power Act to enter upon an investigation of the issues raised in the complaints filed by Reading and Wakefield in Docket No. E-7400 and by Norwood in Docket No. E-7517 and the answers to those complaints.

(5) Good cause exists for consolidating the proceedings in Docket Nos. E-7400, E-7517, E-7485, and E-7533 for purposes of hearing and decision.

(6) Good cause exists for granting the motion by Reading and Wakefield to withdraw without prejudice a previously filed motion seeking an investigation into the alleged deterioration of electric service supplied by Edison.

The Commission orders:

(A) The motion to reject Edison's submittal of Rate S-1 is hereby denied and Rate S-1 is hereby accepted for filing.

(B) An investigation is hereby ordered into the issues raised by the complaints and answers filed in Docket Nos. E-7400 and E-7517.

(C) The proceedings in Docket Nos. E-7400, E-7517, E-7485, and E-7533 are hereby consolidated for purposes of hearing and decision.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act and pursuant to the Commission's Rules of Practice and Procedure, a public hearing shall be convened to

Docket Nos. E-7400, E-7517, E-7485  
and E-7533

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conference with a prehearing conference to be held on May 19, 1970, at 10:00 a.m. (EDT) at the offices of the Federal Power Commission in Washington, D. C. concerning all of the issues raised in the proceedings consolidated by this order.

(E) Pending such hearing and decision thereon, Rate S-1 is hereby suspended and the use thereof deferred until May 1, 1970. On that date, Rate S-1 shall take effect in the manner prescribed by the Federal Power Act, and Edison, subject to further orders of the Commission, shall charge and collect the increased rates and charges set forth in Rate S-1 for all power sold and delivered thereunder.

(F) Edison shall refund at such times and in such manner as may be required by final order of the Commission, the portion of the increased rates and charges found by the Commission in the consolidated proceeding not justified, together with interest at the rate of 8.0 percent per annum, from the date of payment to Edison until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rates and charges effective as of May 1, 1970, for each billing period; and shall report (original and one copy) in writing and under oath, to the Commission monthly, for each billing period, the billing determinants of electric energy sold and delivered under Rate S-1, and the revenues resulting therefrom as computed under the rates in effect immediately prior to May 1, 1970, (including Rate N-1, if appropriate), and under the rates and charges made effective by this order, together with the differences in the revenues so computed.

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and E-7533

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(G) Unless otherwise ordered by the Commission, Edison shall not change the terms or provisions of Rate S-1 until this consolidated proceeding has been terminated or until the period of suspension has expired.

(H) Reading and Wakefield are hereby permitted to withdraw their motion filed on February 24, 1970, without prejudice to their refiling that or a revised motion.

(I) Notices of intervention and petitions to intervene in the consolidated proceeding may be filed with the Federal Power Commission, Washington, D. C. 20426, on or before May 18, 1970, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.37).

By the Commission. Commissioner Carver dissenting filed a  
( S E A L ) separate statement appended hereto.

Gordon M. Grant,  
Secretary.

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## APPENDIX A

BOSTON EDISON COMPANY

Rate Schedule Designations  
 Filed: March 30, 1970

Instruments: General Service for Resale, General Terms and Conditions  
 General Service for Resale, Rate for All Requirements Service, Rate S-1  
 General Service for Resale, Definition and Special Condition of All Requirements Service.

<u>Rate Schedule Designation</u>	<u>Customer</u>
FPC No. 45 (Supersedes FPC No. 3 as supplemented)	Boston Gas Company
FPC No. 46 (Supersedes FPC No. 10 as supplemented)	New England Power Company
FPC No. 47 (Supersedes FPC No. 13)	Town of Concord
FPC No. 48 (Supersedes FPC No. 14)	Town of Norwood
FPC No. 49 (Supersedes FPC No. 15)	Town of Reading
FPC No. 50 (Supersedes FPC No. 16)	Town of Wakefield
FPC No. 51 (Supersedes FPC No. 17)	Town of Wellesley

Municipal Light Boards of )  
Reading and Wakefield, Massachusetts,)  
Complainants, ) Docket No. E-7400  
v. )  
Boston Edison Company )  
Respondent )  
  
Norwood Municipal Light Department, )  
Norwood, Massachusetts, )  
Complainant, ) Docket No. E-7517  
v. )  
Boston Edison Company, )  
Respondent )  
  
Boston Edison Company ) Docket Nos. E-7485  
and E-7533

(Issued April 29, 1970)

CARVER, Commissioner, dissenting:

Clearly, Boston Edison's rate increase filing in these dockets requires suspension for investigation, hearing and decision on the evidence. I must, however, voice objection to the discriminatory treatment reflected in the unexplained determination that the annual rate increase exceeding \$2,733,000 be suspended for one day only.

These proceedings originate in a unilateral filing of a new wholesale rate schedule which will result in an average increase of more than 20% to six of Boston Edison's seven customers. Five of these are municipally operated distribution systems. In no recent case of similar magnitude has this Commission failed to impose the full five month suspension period permitted by Section 205(e) of the Federal Power Act. In Duke Power Co., Docket No. E-7513, the order issued November 20, 1969, suspended a 5.54% increase approximating \$1,650,000 annually for five months and similar action was taken in Union Electric Co., Docket No. E-7525, on a proposed 10.7% increase involving \$819,000 annually. The sole instance of a one-day suspension in the past year involves Boston Edison Co., Docket No. E-7485, which is being consolidated herein. There, however, a minor adjustment in sale terms involved approximately \$58,000 per year.

Docket No. E-7400  
et al.

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The reasons for a longer suspension period appear more compelling here than in the situations cited above. A rate increase which is larger in dollar amount and in percentage is being visited upon fewer affected customers. The impact of an unanticipated cost increase will fall most heavily on municipal distribution systems. By the very nature of their operations, such entities maintain narrower financial reserves and have less flexibility to change retail rate structures on short notice.

Apart from Commission practice, a conceivable case for short-term suspension might exist if the filed rates merely related rate of return to increased production and delivery costs. That is not the case here; Boston Edison's proposed Rate S-1 incorporates fundamental changes in rate design and conditions of service. It is by no means apparent that they have such prima facie validity as to presage ultimate approval. Any "irretrievable loss" that might result from suspension for five months should be put in realistic perspective. Over the maximum suspension period, the increase sought by Boston Edison represents about six-tenths of one per cent of its total annual revenues from the sale of electricity. By contrast, the interim cost increase to its five municipal customers would exceed 5.5% of their total annual electric utility operating income. Any risk of uncertainty would thus work much harsher consequences upon the customer than the rate increase applicant.

The public interest is ill served by an action of this Commission which is so discriminatory on its face and so unsound in its potential impact on the affected Massachusetts consumers.

  
John A. Carver, Jr., Commissioner

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Boston Edison Company

Docket No.

BOSTON EDISON COMPANY'S ANSWER TO MOTION  
FOR INQUIRY AS TO SERVICE ADEQUACY

The Municipal Light Boards and Departments of Reading and Wakefield, Massachusetts, filed a motion dated April 22, 1970, requesting either that Boston Edison Company's S-1 rate submission be rejected for filing or that staff studies and formal investigation of the adequacy of the company's service be carried out prior to assigning a filing date to the submission. The Commission by its order issued on April 29, 1970, in the consolidated proceeding in Docket Nos. E-7400, E-7517, E-7485 and E-7533 denied the municipals' motion to reject, together with their earlier motion to reject dated February 24, 1970, and reserved consideration, until Boston Edison had opportunity to file answer, of the request for staff studies and formal investigation of service adequacy.

At the outset, it is noted that the municipals' request was that the Commission institute inquiry "prior to assigning a filing date to . . . [the S-1] rate submission and its acceptance for filing." Since the Commission has accepted the S-1 rate for filing, suspended it for a day, and permitted it to become effective as of May 1, 1970, the municipals' request, by its strict terms, was denied by the Commission. For purposes of this answer, Boston Edison assumes that the

municipals alternatively seek an inquiry after acceptance for filing of the S-1 rate as part of the rate proceeding set for hearing.

The municipals allege service deficiencies in three respects: (1) that voltage reductions are frequent and increasing; (2) that because of Boston Edison's inability to obtain crossing permits from the Town of Sherborn, Massachusetts, it cannot assure reliable, uninterrupted service to certain customers; and (3) that because of Boston Edison's inability to obtain right of way, it has been unable to institute a 115 kv interconnection with Reading.

Boston Edison's answer is in two major parts:

(1) Voltage reductions, which may be necessary in the short term to preserve desirable reserve levels and protect continuity of service, are not the result of any delinquency of Boston Edison. Such reductions are accomplished on a regional or area basis and Boston Edison, as a member of the New England interconnected grid does its part in the coordinated effort to support the grid as a whole. As the Commission knows, every effort is being made by the electric utilities in New England to eliminate the need for the reductions. Boston Edison has made diligent and good faith efforts to obtain crossing permits from Sherborn and to acquire right of way for the 115 kv interconnection with Reading.

(2) In any event, consideration of the reasons for temporary voltage reductions or delays in acquiring crossing

permits and right of way has no place in the consolidated rate proceeding. The Federal Power Act clearly segregates the matter of adequacy of service from the matter of reasonableness of rates. The former subject is covered in section 207; the latter subject in sections 205 and 206. While section 207 provides the sole authority under the Act for establishing standards of service, the municipals' motion does not purport to be filed under that section, does not comply with the requirements of that section, and does not ask for any relief that could be afforded under that section.

### I.

Voltage reductions. The municipals allege that system voltage reductions have become substantial and frequent; that they are becoming more frequent; that they have significant adverse effects on the operation of customer equipment and appliances; that Boston Edison's reserves are inadequate as are those of others with which it is interconnected; and that with voltage reduced one more forced outage of a major unit will result in load shedding and blackouts.

In the first place the municipals fail to supply a complete portrayal of the causes of voltage reductions in New England. As the Commission well knows Boston Edison is interconnected with its neighbors and is thus a part of the interconnected New England grid. Together, New England companies operate under the guidance of CONVEX, REMVEC and, shortly, the newly formed New England Power Exchange

These mechanisms are designed to achieve coordinated mutual support by member companies. Thus, quite properly and consistent with FPC concepts of reliability, regional considerations prevail. Viewing the region as a whole, in cases where reserve margins are jeopardized by forced outages of generation, the power exchange organizations have occasionally recommended area-wide voltage reductions in order to maintain reserve margins to the extent possible. Contrary to the analysis at page 7 of the municipals' motion, voltage reductions are not instigated after the several companies have "brought on all available reserves," but rather, the program is designed to protect reserves and thus will be instituted prior to such resort to reserves as would bring the reserve level below that which the companies endeavor to maintain.

An analysis of the role of voltage reductions in today's New England scene, dated February 26, 1970, has been prepared by Jackson and Moreland, consulting engineers, and was sent to the Massachusetts legislative Special Commission on Power Failures and Power Rates and Related Matters. It is attached hereto as Appendix A.

That there is a generalized problem relative to the adequacy of generation reserves, no one would gainsay. It is not peculiar to New England. It is common knowledge that construction delays, sometimes the result of interventions in regulatory proceedings, have occurred. The Federal Power Commission keeps well informed as to the

events which are causative and as to the comprehensive efforts of the industry to remedy the situation.

Be that as it may, Boston Edison has joined with other New England companies in effecting necessary voltage reductions. In each instance the response has been to the regional need.<sup>1/</sup> The municipals make no recognition of this fact. They condemn the Company as though every instance of voltage reduction could be laid to its door. This is not the case. There have been numerous instances of forced outages of large generating units and of delays in construction schedules in New England and indeed in the entire Northeast region.

In fact, Boston Edison's posture, in terms of generating capacity as compared with system demand, is substantially better than that of the New England region as a whole. Boston Edison had 2,037,000 kw of generating capacity on its own system, purchased 212,000 kw of capacity and sold 224,000 kw of capacity at the time of its December, 1969 peak. At the time of its 1969 annual peak load of 1,654,000 kw, then, it had capacity in addition to load of 371,000 kw which is approximately a 22.5% reserve.

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1/ The municipals list in Appendix A to their motion a schedule of alleged reductions undertaken by the Town of Reading. Boston Edison's records and those of REMVEC do not coincide with Reading's list, either as to the frequency of occurrence or the time. Boston Edison does not agree with other factual statements on page 5 of the motion relative to the extent of such reductions.

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Certainly no one would choose voltage reductions as a permanent characteristic of a power system, and the electric companies of America are doing all that is possible to bring about an end to the conditions which have recently prevailed. To do so requires earnest dedication to the task on the part of all.

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Sherborn crossing permits. The municipals' claim is that Boston Edison has been delinquent in efforts to construct and operate a 230 kv transmission line between Medway and Sudbury, Massachusetts, which is needed in the interest of reliable, uninterrupted service for the 1970 summer peak period. The company has been attempting since 1965 to build the line on a right of way which has been used for many years for power transmission facilities. At present, construction has been completed from Medway to the town line between Natick and Framingham, Massachusetts and only 2,900 feet, requiring approximately twelve weeks of construction, remains to be built.

The prolonged delay has been caused by opposition to the transmission line in the courts. The chronology attached to this answer as Appendix B tells the story in detail. The matter was first taken before the courts in April 1967, as an appeal by the towns of Sudbury, Wayland, and Framingham, Massachusetts, from an order of the Massachusetts Department of Public Utilities granting zoning exemptions. In January, 1969, the Massachusetts Supreme Judicial Court affirmed the Departments' decision. In the meantime, the building inspector of the Town of Sherborn, Massachusetts, had sued in the Middlesex Superior Court to enjoin construction (September 1967), and the suit had been dismissed (March 1968). Construction of the transmission line was completed by December 1968 from Medway to the town line between Natick and Framingham, Massachusetts, and work was begun in the spring of 1969 on

the Framingham-Sudbury segment.

In June and July 1969 the building inspectors of Sudbury and Wayland ordered work stoppage in their respective towns, and Boston Edison immediately sought injunctions from the Middlesex Superior Court against the inspectors. The two towns filed cross-suits. On August 6, 1969, the Supreme Judicial Court for Suffolk County enjoined further construction on the transmission line. Sherborn and Framingham brought additional suits in the Middlesex Superior Court against the company in August and September 1969. All suits pending before the Middlesex Superior Court in regard to the transmission line were transferred to the Supreme Judicial Court for Suffolk County in October 1969. By decision of November 26, 1969, the court held that the company must obtain new street crossing permits from the seven towns involved and certain approvals from the Massachusetts Department of Public Utilities.

When it had become obvious that the transmission line could not be completed for the 1969 winter peak as a result of the pending litigation, Boston Edison had petitioned the Massachusetts Department of Public Utilities for permission to construct, for emergency relief, a temporary transmission line from Sherborn to Framingham at an estimated cost of \$400,000. By order attached to this answer as Appendix C, the Department denied the request on November 12, 1969, on the ground that such an expense was inordinate for the purpose of temporary relief from unreliability.

Following the court decision and the Department order, Boston Edison entered into conferences with the towns and the Department to explore resolution of the impasse, so that the transmission line could be in operation for the 1970 summer peak. Numerous meetings and hearings were held in December 1969 and January, February and March 1970. Boston Edison submitted applications for the necessary crossing permits in January 1970. By February 9, 1970, a majority of the towns had granted the permits.

Sherborn demanded as a condition of the crossing permit the removal of six steel towers and their replacement with tapered steel poles. The cost of such replacement was estimated to be in excess of \$400,000 (Appendix E). Under Massachusetts law, once a majority of towns involved have acted favorably on the street crossings for a transmission line, the Department of Public Utilities may consider the grant of a crossing permit if remaining towns have either (a) acted adversely on an application or (b) failed to act on an application within 90 days of its submission. Boston Edison by letter of January 27, 1970, attached to this answer as Appendix D, explained to Sherborn the critical situation that existed because the transmission line was incomplete and asked for favorable action on the Company's application. Boston Edison sought, if favorable action were not forthcoming, at least prompt action in rejecting the application, so that the matter could be expeditiously brought before the Department for resolution. Sherborn did not act upon the Company's application until April 14, 1970, 89 days after its submission.

It then granted the crossing permit.

The remaining authorization needed is a certificate of convenience and necessity and zoning exemption from the Department on which hearings have been concluded. The Company is prepared to resume construction promptly upon receiving this authorization, and it is hoped that the line will be in operation for the 1970 winter peak.

When it became apparent that favorable action by Sherborn would not be promptly taken, Boston Edison by letter of March 19, 1970, advised communities which might be affected that until the Medway-Sudbury 230 kv line is completed, service interruptions might be experienced under certain conditions and suggested that they make appropriate plans, particularly with regard to essential municipal services. The company further stated that it might be necessary to refuse to connect new electrical loads and to ask industrial customers to limit operations. As made clear in Boston Edison's letter of March 26, 1970 (Appendix E), the affected communities were entitled to know of the reliability problems and their source. The charge, repeated in the municipals' motion, that Boston Edison's letter was "blackmail" is utterly unwarranted. The flavor of "blackmail" is found in the following statement from the municipals' motion:

". . . in this climate of deteriorating public relations and public confidence, Edison can expect increasing resistance to its transmission line projects . . ."

The facts, in short, are that Boston Edison timely planned and initiated the Medway-Sudbury 230 kv line, but has been held

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up from completing that line by opposition over which it had no control.

Boston Edison has kept the Commission informed of developments relating to its efforts to complete the transmission line. In a letter dated April 6, 1970, attached to this answer as Appendix F, the Chief of the Bureau of Power, while noting that the Commission is "vitally interested . . . in the adequacy and reliability of electric service and . . . [is] concerned about any problems which may jeopardize the power supply," stated that the "Commission has no particular jurisdiction in this case." Thomas J. Galligan, Jr., President of Boston Edison, replied on April 16, 1970 (Appendix G).

Reading 115 kv interconnection. The municipals make an extended attack on Edison for being "unable to assure" an in-service date for the portion of the 115 kv interconnection which Edison has agreed to make with Reading. They repeatedly state that Reading could have met a November 1969 date and that the additional 13.8 kv feeder installed in 1969 was forced upon Reading and was wasteful. These allegations appear directly contrary to the facts presented by the Manager of the Reading system in his annual report to the Municipal Light Board, which was published as a part of the 1969 Annual Report of the Town Officers to the residents of Reading. The Report would indicate that Reading was unable to acquire the necessary land until the end of 1969 and has experienced delays in the delivery of equipment. Further the report indicates that Reading will make future use of the new 13.8 kv supply line installed in 1969. In the report it is stated, inter alia,

#### CONSTRUCTION HIGHLIGHTS:

Early in October, a new 13,800 volt supply line from Boston Edison Company entered our system at the Reading-Woburn line from which point the department installed an additional 13,800 circuit feet of 477 MCM compressed aluminum aerial spacer cable along West Street to Industrial Way in Wilmington. This feeder will provide an additional 12,000 KVA capacity to our system and will enable the department to meet the current system electrical demands until the new Causeway Road Substation is completed in 1970. After the Causeway Road Station is completed the spacer cables on West Street, Reading, will be utilized to supply power to our Ash Street Station and the present supply from the Boston Edison Company Substation located at Dragon Court, Woburn will be discontinued.

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\* \* \*

The new 115 kv Causeway Road Substation, originally planned to be in operation by November 1969 was delayed due to land acquisitions and exceptionally long delivery schedules on station equipment. However, at the end of 1969 all necessary land has been acquired, all equipment has been ordered and the long delivery equipment delivered to our service area on Ash Street. Construction of the station will commence in the early Spring of 1970 and will be completed and in operation by November of 1970.

Especially difficult to understand is the municipals' apparent assumption -- there is no explicit assertion -- that the completion date of the 115 kv interconnection is, in fact, within Boston Edison's control. Thus, they want the Company to "assure performance" and to give "commitment as to the date" and they charge the Company with "unwillingness to commit itself" and "failure to assure the 115 kv interconnection." The municipals evidently do not understand that the scheduling of transmission lines is not a matter of "assurance." Regrettable as it may seem to the municipals, legal processes in eminent domain proceedings and proceedings for local street crossing permits must run their course and the company does not control them. It is largely for this reason that the interconnection agreement did not provide a completion date.

While it is certainly true that Edison has been unable to assure an in-service date for its 115 kv facilities, because of the difficulties being experienced in acquiring right of way, the record is clear that Edison has diligently pressed to meet the completion date desired by Reading

"to the best of its ability", as it had informed Reading it would. If no further snarls develop, Edison hopes to be able to make a November, 1970 date. Edison also hopes that Reading will obtain a favorable result in the injunction action pending against Reading's portion of the new 115 kv line prior to that time.

Edison denies, however, that service to Reading during the 1970-71 winter is imperiled if the line is not completed. Even at the approximately 18.5% load increase projected by Reading for its 1970-71 winter peak, there is sufficient capacity in the existing lines for Reading to receive full service at the time of its peak, even if one line is out of service. Edison has repeatedly had to answer similar claims by Reading of lack of Edison capacity, claims which Reading has used to support its desire for an early 115 kv interconnection. Cf. Affidavit and Memorandum of Boston Edison Company in Opposition to Complainants' Application for an Order for a Temporary Connection under Section 202(c) of the Federal Power Act, in Docket No. E-7400, dated March 25, 1968.

An unusual claim by the municipals is that they have been "punished" for not agreeing at an earlier date to the 115 kv interconnection, since the high tension rate has increased since the first expression of interest in 115 kv service. There is no reason to suppose that the rates would not have increased in the same manner if the agreement

had become effective earlier. It is equally clear that Reading knew at the time it applied for 115 kv service that the rate at which it would be charged by Edison for that service was subject to change. The application (attached hereto as Appendix H ) expressly provides:

"\* \* \* to supply electric service under the Company's rate schedules applicable to such service as the same may be in effect from time to time subject to action of the Federal Power Commission."

The motion repeatedly mentions the fact that Reading has "spent or committed" \$1,300,000 to the interconnection. Again erroneously postulating electric rate competition for industrial loads in Massachusetts, the motion attempts to imply that Edison would deny Reading the benefit of this investment by means of the S-1 rate filing. Such is clearly not the case. By the expenditure of \$1,300,000 of internally generated funds, Reading will save 70¢/kva month once the interconnection is completed, a sum noted on page 16 of the motion to be "some \$450,000" annually. This is true because Edison's rates reflect Edison's costs.

## II.

Consideration of the reasons that voltage reductions are temporarily necessary to preserve service continuity or that delays have been encountered in obtaining certain crossing permits or in acquiring certain right of way has no place in the consolidated rate proceeding. Under long established cost of service doctrine, these matters have no bearing on any issue in the case.

The Federal Power Act deals separately with the subjects of 1) lawfulness of rates and 2) adequacy of service. The former subject is treated in sections 205 and 206, pursuant to which the consolidated rate proceeding was set for hearing by the Commission's order of April 29, 1970. The latter subject is covered in section 207, entitled "Furnishing of Adequate Service," which reads as follows:

"Whenever the Commission, upon complaint of a State commission, after notice to each State commission and public utility affected and after opportunity for hearing, shall find that any interstate service of any public utility is inadequate or insufficient, the Commission shall determine the proper, adequate, or sufficient service to be furnished and shall fix the same by its order, rule, or regulation: Provided, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel the public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers."

It was clearly Congress' intent that the Commission's consideration of adequacy of service be performed strictly according to the procedures and under the standards specified in section 207 and that any orders dealing with adequacy of

service be issued pursuant to that section and subject to the limitations provided therein. It should be noted that the complained of voltage reductions are related solely to the quantity of generating capacity available and that the matter of requiring capacity expansion, even were it possible is excluded from the Commission's jurisdiction under section 207. There is nothing in the Act or its legislative history to suggest that the Commission should consider adequacy of service in connection with rates. It is noted that the municipals' motion does not purport to be filed under section 207, does not comply with the requirements of that section, and does not ask for any relief that could be afforded pursuant to the section. Further it is clear that the Massachusetts DPU which has primary jurisdiction over Edison's service is up to date on the problems being experienced.

The Federal Power Act, in separating the provisions on rates and service, follows the traditional scheme of regulatory legislation, and the prevailing rule is that when such scheme is employed, quality of service is not to be considered in ratemaking. Elyria Tel. Co. v. P.U.C., 110 N. E. 2d 59 (1953); Village of Apple River v. Illinois Commerce Commission, 165 N. E. 2d 329 (1960). General Tel. Co. of Michigan v. P. S. C.; 67 N. W. 2d 882 (1954). Of course, a contrary rule may apply when regulatory statutes explicitly provide that quality of service is to be an element in setting rates. United Tel. Co. of Florida, 74 P.U.R. 3d 443 (Fla. P. S. C. 1968). Such

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statutory provisions are, however, a departure from cost of service ratemaking and may be analogized to value of service ratemaking.

WHEREFORE, Boston Edison Company moves that the motion dated April 22, 1970, of the municipal light boards and departments of Reading and Wakefield, Massachusetts, be denied to the extent that it was not previously denied by the Commission's order of April 29, 1970.

Respectfully submitted,

Debevoise & Liberman  
Attorneys for  
Boston Edison Company

By Thomas M. Debevoise  
Thomas M. Debevoise  
Shoreham Building  
Washington, D. C. 20005

May 4, 1970

R 642

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Municipal Light Boards of Reading and Wakefield, Massachusetts,	)	
Complainants,	)	Docket No. E-7400
v.	)	
Boston Edison Company,	)	
Respondent	)	
Norwood Municipal Light Department, Norwood, Massachusetts,	)	
Complainant,	)	
v.	)	Docket No. E-7517
Boston Edison Company,	)	
Respondent	)	
Boston Edison Company	)	Docket Nos. E-7485
	)	and E-7533

JOINT MOTION FOR EMERGENCY AMENDMENT OF ORDER

The Municipal Light Boards and Departments of the Towns of Reading, Wakefield, Concord, Norwood and Wellesley ("Municipalities") through their respective attorneys hereby move the Commission to amend on an emergency basis the Commission's Order issued April 29, 1970 in the above entitled matter with respect to Ordering Paragraph (E), so as to suspend and defer the use of Boston Edison Company's Rate S-1 to July 1, 1970 in order to allow the municipals time for placing in effect increases in their retail rates necessary

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to pass on the S-1 increased charges. In support thereof, the Municipalities respectfully show as follows:

1. A financial emergency has been created for the Municipalities because, under the Commission's Order of April 20, 1970, the 20% increase in Edison's rates is made effective May 1, 1970 while it will take at least two months for all of them to adjust their retail rates in response. During the interim they will be forced to operate at a deficit or substantial loss. Accordingly, they jointly seek to have the suspension period for Edison Rate S-1 enlarged from one day to the time reasonably required to adjust their retail rates.

2. The Municipalities own and operate municipal retail electric distribution systems and purchase their total power supplies from Boston Edison Company ("Edison") at wholesale rates under the jurisdiction of the Federal Power Commission. They provide the total service within their borders, while Reading also serves adjoining communities. The cost of power supply accounts for approximately 55% of the total electric revenues collected by the Municipalities.

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3. Edison, on January 29, 1970, tendered for filing its rate schedule General Services for Resale, Rate S-1, stating that it was to supersede the then effective M rate under which the municipals were buying power from Edison (Docket E-7485). Reading and Wakefield filed motions to reject the submission on February 24 and April 22, 1970, and on February 26, 1970, a formal letter opposing acceptance for filing. Norwood, Wellesley and Concord pursuant to a request by the Secretary of the Commission on February 6, 1970 filed a formal letter on February 22, 1970 opposing the rate filing on a number of grounds. All of the municipals sought a 5-month suspension of the Rate S-1 if accepted for filing. The Commission found in its order issued April 29, 1970, that "The proposed increased rates and charges contained in Rate S-1 have not been shown to be justified and may be unjust, reasonable, unduly discriminatory or preferential, or otherwise unlawful under the Federal Power Act" (page 18) and instituted an investigation into these rates. The Commission also accepted the Rate S-1 for filing as of April 30, 1970 and directed that it be suspended for only one day, thereafter

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to be effective, i.e. on May 1, 1970, subject to refund, with interest, of the increased charges ultimately found to be not justified.

4. This action has the effect of immediately increasing the cost of power to the Municipalities by approximately 20 per cent, a combined total of approximately \$1,517,000 a year. The amount of the increase in each case approximates the Municipalities' 1969 net operating income, <sup>\*/</sup> before payments in lieu of taxes and is substantially in excess of such net operating revenues after payments in lieu of taxes. As a result, permitting the rate increase to be effective with only one day suspension places the

*/	1969			Rate S-1: Increase, 12 Months ending March 31, 1970
	Excess: Revenues Over Expenses	Payments in lieu of taxes	Net Retained	
		(\\$)	(\\$)	(\\$)
Reading	641,833	241,842	399,991	534,411
Wakefield	202,420	202,420	0	188,433
Norwood	408,254	0	408,254*	357,486
Concord	246,287	80,315	165,972	187,485
Wellesley	283,594	0	283,594	249,644

\*The Utility Department of Norwood does not retain these funds, rather they are paid into the town treasury. Budgeting and disbursements are administered by the treasurer.

Note: Financial needs of 3 municipals are increased because of pending capital expansions: Reading \$1.3 million and Norwood \$3.3 million for 115 kv interties; Wellesley,

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Municipalities in the position of operating at a deficit or a substantial loss until their retail rates can be effectively increased by the amount of the increased power supply charges which the Commission has permitted Edison to collect for services on and after May 1, 1970.

5. The Municipalities had anticipated that, if the motion to reject Rate S-1 were denied, the Commission would suspend that rate for the full 5-month period provided in Section 205(e) of the Federal Power Act in accordance with the Commission's long-established practice in major rate increase cases. The Towns therefore expected, should the motions to reject be denied, that they would have time during the 5-month suspension period to make the necessary adjustments in their retail rates. The earliest reasonable date for implementing changes in all their municipal retail rates is July 1, 1970.

6. The Commission has stated with reference to

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\* / Massachusetts General Laws, Chapter 164, Section 58 provides that "any change shall take effect on the first day of a month, and shall first be advertised in a newspaper, if any, published in the municipality." It also specifies limitations on municipal rates and the authority of the Department of Public Utilities over such rates.

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the parallel provision of the Natural Gas Act (Yucca Petroleum Co., 29 FPC 211, 212 (1963)):

"In our view, a lesser suspension period than the five month suspension period permitted under section 4(e) of the Natural Gas Act should not be authorized except in those instances when strong equitable considerations dictate that a shortened suspension period is warranted."

7. While we are unaware of any "equitable considerations" which "dictate" that the rate increase should not be suspended for the full 5 months, there can be no question but that "equitable considerations dictate" a suspension sufficient to permit the Towns to adjust their retail rates. In contrast to the problems facing these Towns, absent an enlargement of the suspension discussed above, Edison will suffer no substantial injury, other than the loss of the possibility of collecting revenues in excess of an overall reasonable rate of return, should the suspension be enlarged. Indeed, any injury that Edison could possibly suffer would clearly be of the nature anticipated in such situations contemplated by Congress when it nevertheless provided for a 5-month suspension of rate increases. See Hope Natural Gas Co. v. F.P.C. 196 F. 2d 803 (4th Cir., 1952).

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\*/

8. The Commission's statistics show that the rate of return earned by Edison on its rate base of 1968 was 8.1 per cent. This rate of return increased in 1969 to 8.5 per cent, as shown in the analysis prepared by the consulting firm Van Scoyoc & Wiskup, Inc. from Edison's Form 1, Annual Report to the Federal Power Commission for the year ended December 31, 1969. See Appendix A hereto. Significantly, Edison earned these rates of return without the increased revenues involved in its S-1 rate.

9. Edison's prognostication for 1970 does not indicate any downward swing in its earnings or net revenues. To the contrary, its Quarterly Report to Stockholders for the First Quarter of 1970 sounds a highly optimistic note:

"Earnings per share increased 30 cents in this quarter. This represents normal growth plus the fact that in this quarter last year we experienced 17 cents of non-recurring costs from the adverse impact of two storms and a prolonged loss of generating capacity. Even though we are faced with high interest rates and the effects of continuing inflation on operating expenses and taxes, the Company still expects that 1970 will be another growth year."

---

\*/ Statistics of Privately Owned Electric Utilities in the United States, 1968; FPC p. 653.

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The report shows a substantial year-to-year growth in earnings per share, as follows:

	<u>1970</u>	<u>1969</u>
Three months ended March 31	\$0.97	\$0.67
Twelve months ended March 31	3.41	2.80
Extraordinary Item	<u>-</u>	<u>.17</u>
Net Income	\$3.41	\$2.97

10. Moreover, assuming arguendo, that full weight is given to the adjusted test year cost of service data submitted by Edison in support of its increased rates, Edison would still be earning - without the S-1 rate increase - an overall rate of return on total plant of 7.63%, which would be increased to 7.84% by the Rate S-1 increase.<sup>\*\*</sup> Based upon past experience it seems obvious that some, if not all, of Edison's downward adjustments of the 1968 test period data will be refuted. However, even giving Edison the benefit of the doubt, it is plain that on balance the loss of an opportunity to Edison to increase a 7.63% overall rate of return by 0.21% is far outweighed by the impact upon the municipalities if the effective date of the S-1 Rate is not postponed.

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<sup>\*</sup> The Edison report to which reference is made is attached hereto as Appendix B.

<sup>\*\*</sup> These rates have been calculated by Van Scyoc & Wiskup, Inc. from Edison's Statement of Cost of Service - 1968, submitted in support of the instant rate submission. See particularly

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11. The Commission has always recognized equitable difference between a utility required to operate for a matter of months somewhat below a reasonable rate of return, and a utility required to operate at a deficit even for a few months. Tennessee Gas Transmission Co., 13 F.P.C. 772 (1954).

12. In seeking the relief requested in this motion, the Municipalities wish to make clear their belief that the Rate S-1 and all its related terms and conditions should have been rejected for filing, or if accepted, then it should have been suspended for the full 5-month period provided in Section 205(e). Accordingly the Municipalities, by filing the instant motion, do not waive their right to file an application for rehearing of the Commission April 29, 1970 Order to that effect.

WHEREFORE, for the foregoing reasons, the Towns of Reading, Wakefield, Concord, Norwood and Wellesley respectfully move: 1) for amendment of the Ordering Paragraph (E) of the Commission's Order of April 29, 1970 to provide for the suspension of Rate S-1 to July 1, 1970;

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2) for such other action as the Commission may deem appropriate; and 3) for the Commission to shorten the time for answering the instant motion to 5 days because of the financial emergency involved.

Respectfully submitted,

MUNICIPAL LIGHT BOARDS AND  
DEPARTMENTS OF THE TOWNS OF  
READING AND WAKEFIELD,  
MASSACHUSETTS

By George Spiegel  
George Spiegel  
Their Attorney

MUNICIPAL LIGHT BOARDS AND  
DEPARTMENTS OF THE TOWNS OF  
CONCORD, NORWOOD AND WELLESLEY,  
MASSACHUSETTS

By Charles F. Wheatley, Jr.  
Charles F. Wheatley, Jr.  
Their Attorney

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Washington, D. C. 20037

May 8, 1970

R 652

BOSTON EDISON COMPANY

Rate of Return Earned on Rate Base  
Electric Utility Operations  
for the Year 1969

<u>Description</u>	<u>Amount</u>
Average Electric Plant in Service	\$ 660,647,724
Less: Average Reserve for Depreciation 1/	206,114,146
Average Net Electric Plant	\$ 454,533,578
Less: Accumulated Deferred Income Taxes 2/ Accelerated Amortization Liberalized Depreciation Investment Tax Credit Total	\$ ( 3,814,322) ( 26,051,578) ( 6,643,752) \$ ( 36,509,652)
Less: Contributions in Aid of Construction 2/	\$ ( 2,836,711)
Working Capital	
1/8 of Direct Expenses	\$ 7,462,303
Materials & Supplies 3/ 4/ Prepayments 3/	8,228,766 1,737,316
Total Working Capital	\$ 17,420,365
Rate Base	<u>\$ 432,615,600</u>
Total Electric Utility Operating Income	<u>\$ 33,734,281</u>
Per Cent Earned on Rate Base	<u>7.80%</u>
Total Electric Utility Operating Income	\$ 33,734,281
Add: Provision for deferred taxes	2,989,674
Adjusted Electric Utility Operating Income	<u>\$ 36,723,955</u>
Per Cent Earned on Rate Base	<u>8.49%</u>

Notes:

- 1/ Electric only; excludes amount allocated to steam heating
- 2/ Average of beginning and ending balances
- 3/ Average of beginning and ending balances,  
excluding allocation for steam
- 4/ Excludes materials for construction

Data Source: Boston Edison Company, FPC Form 1, 1969.

Analysis prepared by: Van Scoyoc & Wiskup, Inc., Washington, D. C.

## APPENDIX B

For the third consecutive year this Company sponsored Edison Science Youth Day for promising young high school students and science teachers at M.I.T. The audience was treated to a series of thought provoking presentations which ran from an oceanographic voyage on a Russian research vessel through a journey into space to an introduction to the laser, by Dr. Harold Edgerton, Dr. Thomas R. McGethern and Dr. William R. Bennett, Jr.

## BOSTON EDISON COMPANY

QUARTERLY

DIVIDEND

REPORT

On January 29, the Company filed with the Federal Power Commission for a \$2.2 million increase in our wholesale rate schedule. It is designed to provide a rate of return from our firm wholesale customers commensurate with that which we receive from all our other customers.

May 1, 1970

Charles F. Avila  
Chairman

This report and the financial statements contained herein are submitted for the general information of the present stockholders of Boston Edison Company as such. It is not a representation, prospectus or circular in respect of any stock or security of the Company, and is not transmitted in connection with any sale or offer to sell or buy any stock or security now or hereafter to be issued, or with any preliminary negotiation for such sale.

MAY, 1970

The enclosed check represents your dividend payable May 1, 1970.

The date of record for holders of stock is at the close of business on April 10, 1970.

Your dividend is at the rate indicated below for the class of stock you hold.

Common Stock      \$ .56 a share

4.25% Preferred Stock      \$1.06 a share

4.78% Preferred Stock      \$1.20 a share

The accompanying figures show the results of Company operations for the three- and twelve-month periods ended March 31, 1970, and for the three- and twelve-month periods ended March 31, 1969.

Earnings per share increased 30 cents in this quarter. This represents normal growth plus the fact that in this quarter last year we experienced 17 cents of non-recurring costs from the adverse impact of two storms and a prolonged loss of generating capacity. Even though we are faced with high interest rates and the effects of continuing inflation on operating expenses and taxes, the Company still expects that 1970 will be another growth year.

The directors of Boston Edison Company voted on March 23 to increase the quarterly dividend on the common stock from 52 cents to 56 cents per share, payable May 1, 1970 to stockholders of record April 10, 1970. On an annual basis, this is equivalent to \$2.24 per share.

The stockholders have approved a new issue of a \$60 million Series M first mortgage bonds. The present schedule, if adhered to, would make them available to the public on June 22, 1970.

The 635-ton nuclear reactor vessel for Pilgrim Station has completed its 29-day voyage from Chattanooga, Tennessee, down rivers, canals and locks, across a lake and up the eastern seaboard to its home at Plymouth, Massachusetts. As it was eased into a narrow slip on February 27, its arrival marked the latest chapter in the saga of Pilgrim Station.

Despite the long strike at General Electric Company which is building our turbine generating unit, the Company is still optimistic that Pilgrim Station will go on line as scheduled, September 30, 1971.

In view of the nationwide pressure for ecology action to clear up the environment, our shareholders should be aware of some of Edison's cleaner air activities. We have over the years had various air quality control programs for smoke and soot control at our generating stations. Our units have been equipped with the best combustion systems available. As technology advanced our equipment was improved. Our stations have closed circuit TV monitors and smoke density equipment which incorporates audio and visual alarm signals designed to operate when smoke limits are exceeded. We installed at our Edgar



LANDING OF THE NEW PILGRIM. After its 3,587-mile trip by water from Chattanooga, Tennessee, the Pilgrim Station nuclear reactor vessel touches land again at Plymouth.

Station new foreign made oil burners, the first of their kind in the country, designed to reduce stack emissions by more than half. We use low-sulphur oil whenever atmospheric conditions require it.

The Company has established a sulphur dioxide monitoring system in the metropolitan area to analyze air quality and determine Edison's contribution to sulphur dioxide pollution.

We are working with engineers at the Chemical Construction Corp. of New York on the design of a "flue gas

scrubber" at our Mystic Station. Though still in the development stage, this "Chemico" scrubber is designed to remove over 90 percent of the sulphur dioxide from our stack gases. The project, however, requires participation of the chemical industry to provide the sulphur recovery plant process.

The Company is also supporting research into magnetohydrodynamics (MHD) at the Avco Everett Research Laboratory. Though some years away, MHD would lend itself to both air and thermal pollution control.

FREY

MAY 1

LAW OFFICES  
GEORGE SINGER,

	<u>Three Months Ended</u> <u>March 31, 1970</u>	<u>March 31, 1969</u>	<u>Twelve Months Ended</u> <u>March 31, 1970</u>	<u>March 31, 1969</u>
<b>OPERATING REVENUES</b>	<b>\$ 54,461,526</b>	<b>\$ 50,974,361</b>	<b>\$203,673,659</b>	<b>\$190,806,562</b>
<b>OPERATING EXPENSES:</b>				
Operation	20,500,491	20,522,816	79,740,048	75,934,660
Maintenance	3,566,219	4,284,577	14,356,262	13,012,786
Depreciation	5,317,500	5,035,500	20,398,664	19,664,202
Taxes				
Federal income	4,275,822	3,663,716	15,666,792	15,609,614
Other	10,202,904	9,612,422	36,665,334	35,385,088
Total	<u>43,862,936</u>	<u>43,119,031</u>	<u>166,827,100</u>	<u>159,606,350</u>
<b>NET OPERATING INCOME</b>	<b>10,598,590</b>	<b>7,855,330</b>	<b>36,846,559</b>	<b>31,200,212</b>
<b>OTHER INCOME AND MISCELLANEOUS</b>				
<b>INCOME DEDUCTIONS — NET</b>	<b>117,357</b>	<b>106,324</b>	<b>249,373</b>	<b>238,637</b>
<b>INCOME BEFORE INTEREST CHARGES</b>	<b>10,481,233</b>	<b>7,749,006</b>	<b>36,597,186</b>	<b>30,961,575</b>
<b>INTEREST CHARGES:</b>				
Interest on long-term debt	4,074,062	2,954,781	13,284,317	9,513,945
Other interest	708,480	298,200	2,800,597	1,926,878
Interest charged to construction-credit	(2,047,095)	(966,909)	(6,877,133)	(3,174,745)
Total	<u>2,735,447</u>	<u>2,286,072</u>	<u>9,207,781</u>	<u>8,266,078</u>
<b>INCOME BEFORE</b>				
<b>EXTRAORDINARY ITEM</b>				
Income tax savings from retirement of obsolescent property	—	—	—	1,264,293
<b>NET INCOME</b>	<b>7,745,786</b>	<b>5,462,934</b>	<b>27,389,405</b>	<b>22,695,497</b>
<b>PREFERRED DIVIDENDS</b>	<b>490,800</b>	<b>490,800</b>	<b>1,960,000</b>	<b>1,960,000</b>
<b>INCOME AVAILABLE FOR COMMON STOCK</b>	<b>\$ 7,254,986</b>	<b>\$ 4,972,134</b>	<b>\$ 25,429,405</b>	<b>\$ 21,999,790</b>
<b>EARNINGS PER SHARE OF COMMON STOCK</b>				
Income before extraordinary item	\$ .97	\$ .67	\$ 3.41	\$ 2.80
Extraordinary item	—	—	—	.17
Net income	<u>\$ .97</u>	<u>\$ .67</u>	<u>\$ 3.41</u>	<u>\$ 2.97</u>

R 660

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Boston Edison Company ) Docket Nos. E-7533, et al.

ANSWER OF BOSTON EDISON COMPANY  
TO MOTION FOR "EMERGENCY"  
AMENDMENT OF ORDER

Late on Friday, May 8, 1970, nine days after the Commission's Order in the above docket, the five municipal systems now served by Boston Edison Company under Rate S-1 filed a motion for "Emergency" Amendment of the Order to suspend the effective date of Rate S-1 until on and after July 1, 1970. The motion requested that the time for answer be shortened to five days because of the "emergency".

Herewith, within the requested five day period Boston Edison files its answer. While it has not been possible in that time to make a complete analysis of the data or the information obtained thus far, Boston Edison is able to aver that no "financial emergency" has been created for the municipals by the Commission's Order permitting Rate S-1 to become effective on May 1, 1970, over three months after notice of the increase. Further, whether or not it will be appropriate for all of the municipals eventually to raise their rates in an amount equal to their increased power costs, on the basis of the information gathered to date, Boston Edison is able to aver that the municipals will not be operating at a cash deficit, as implied, during the next two months.

I

The municipals have not demonstrated any factual basis for their assertion that a "financial emergency" will result from the Commission's Order issued April 29, 1970. The claim is made for the first time in the motion at hand.

One searches the motion in vain for any factual basis to support the bare assertion that "emergency", "deficit", or "substantial loss" will occur should the Commission's Order stand. No financial statements are offered to show the suggested marginal position of the municipals. Rather, they supply an incomplete and misleading tabulation in a footnote on page 4 of the motion.<sup>1/</sup> Even though not accurately presented and explained, this table on its face refutes the very proposition it is intended to support. It demonstrates, for example, that as to each town, the asserted excess of 1969 Revenues over 1969 Expenses exceeds the effect of the increase of rates for the twelve-month period presented.

The insertion of the column, "Payments in lieu of Taxes", and the subtraction of them from profits is doubtless intended to convey the impression that a deficit position is in the offing as to three of the Towns. But such payments are not mandatory under the laws of Massachusetts. Indeed, the table itself shows that two of the Towns make no payments called "in lieu of Taxes." Moreover, it is not the practice for sums which might be so classified to be paid or transferred on a monthly basis.

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1/ See Appendix A: "Background".

Often municipal light departments in Massachusetts await the results demonstrated by the closing of their books at the end of the fiscal year before a determination is made as to what sums, if any, are available to be applied to a reduction of the local tax levy. Thus, even if a comparison of annual figures were relevant to the issue, that which is presented falls far short of substantiating the claimed result.

The irrelevancy of such a comparison is apparent when one considers that the thrust of the motion is to gain relief for but two months, namely the months of May and June, 1970. It is interesting to analyze the impact of the new rate on the two months in question. It may be described as follows:

**ESTIMATED INCREASE IN REVENUE UNDER RATE S-1, MAY AND JUNE, 1970.**

	May 1/ A	June 1/ B	2 Mos. C	Municipal's Operating Revenue -- 1969 D 2/	Ratio C/D E
Reading	\$45,255	\$49,523	\$94,748	\$4,721,967	2.0%
Wakefield	16,176	18,739	34,915	1,895,035	1.8%
Norwood	26,429	31,603	58,032	2,677,123	2.2%
Concord	15,307	17,044	32,351	1,338,882	2.4%
Wellesley	19,145	21,587	40,732	2,392,608	1.7%

From the foregoing it can be seen that the two-month increase in 1970 is not more than 2.4% of 1969 operating revenues for any town and is as little as 1.7% in the case of Wellesley. That we should conclude that a temporarily added burden in the area of 2% of operating revenues

1/ Source: comparative billing data submitted January 30, 1970.

2/ Source: town reports or 1969 reports to the Massachusetts DPU.

will throw these utilities into an emergency position is to strain credulity. A single storm in New England may have greater impact.

Further, even if we assume the validity of the figures shown on page 4 of the municipals' motion, it is clear that the estimated two-month effect, as shown in column C, above, is less than two-twelfths of the 1969 "Excess: Revenues over Expenses", reported on page 4 of the motion, in all cases except Wakefield where a difference of \$1,212 results.

The municipals have failed to demonstrate that their operations may show a temporary deficit for May and June, 1970. But even if they had shown it, there would be absolutely nothing to prevent them from recouping over the remainder of the year by means of appropriate temporary adjustment in their rates, if indeed any adjustment is necessary. The establishment of rates by Massachusetts municipal electric departments is subject only to the thin prescriptions contained in sections 57 and 58 of Chapter 164 of the General Laws. See Appendix B. From these statutes it can be seen that rate adjustment may be made extremely expeditiously. Further, whenever municipal systems experience a loss for a year, they are explicitly entitled to recoup the loss the following year up to three percent of their investment in their plant, in addition to a return of 8% on cost of plant after expenses including debt repayment.

In any event, the Company submits that such adjustment could yet readily be made effective June 1, 1970. It is interesting to note that Boston Gas Company has already attended to the matter by a filing with

the state commission. Nothing prevented the municipals from doing the same or from being prepared to act with dispatch. It is far easier for them to effect a rate adjustment under the General Laws than it is for Boston Gas.

An additional point should be made. The Federal Power Commission, in allowing rates to become effective, makes them applicable to consumption of electricity on and after the effective date. Thus Rate S-1, effective May 1, 1970, is applicable to usage in May, 1970 for which bills will be submitted to the customers in June of 1970. June usage will be billed by the Company in July, 1970.

On the other hand, in Massachusetts retail rate changes are applied to all meter readings taken after the effective date of the rate change. Thus, should the effective date of a retail rate change in Massachusetts be June 1, 1970, the retail billings in June, 1970 will be at the new rate for usage shown by the meter even though such usage occurred prior to June 1. Revenues collected in June by the municipals as a result of the new monthly billings will cover electricity consumed at least in part in May. Moreover, it is common in Massachusetts for residential bills to be on a bi-monthly basis. So residential bills based on meter readings made after June 1 in the hypothesis may cover consumption not only in May, but also in April. It can readily be seen that the effect of this disparity in the procedures followed by the FPC and the state D.P.U. greatly reduces (if not nullifies) any claimed revenue deficiencies.

Furthermore, it is noted unhappily, that the towns in question have

presented an historic time lag in the payment of bills rendered by Boston Edison. A study on this matter was prepared by the Company for Mr. Lawrence Schulman of the Staff of the FPC in September of 1969. It discloses that the most prompt payer of the Company's bills shows an average lag of 35.1 days from the time the meter is read to receipt of payment. (It usually takes about seven days after meter readings for the bills to be rendered.) Thus the results of the procedural disparity described above are compounded by the experienced time lag for payment.

Let us take a moment to envision the situation as it would be should the relief sought by the municipals be granted: that is, an amendment of Paragraph (E) of the Commission's Order of April 29, 1970 "to provide for the Suspension of Rate S-1 to July 1, 1970." Assume further that the municipals' elect to cause new higher retail rates, covering the increase anticipated, to be made effective July 1, 1970, instead of June 1, 1970. Should this happen, the first bill of the Company on the new basis would be rendered in August, 1970 and would cover only July consumption. On the other hand, bills issued during July by the municipals for their retail service, based on July meter readings, would cover energy supplied by them prior to July and perhaps as far back as May (bi-monthly--residential). Should this be the case, they would be collecting on the new higher basis for energy resold by them for which they paid on the old basis.

Boston Edison submits that the claimed emergency situation which forms the basis of the municipals' prayer for relief is unsupported and

unfounded; that complete protection by rate adjustment on the part of the municipals has been attainable on an expeditious basis since the original submission of Rate S-1 and remains so.

The Company also submits the obvious point that any delay in the effective date of Rate S-1 results in irretrievable loss to the Company, whereas any amounts collected thereunder which are found to have been unjustified are subject to refund at an interest rate of 8%.

## II

Instead of making any effort to support their claims of an operating deficit absent "emergency" relief, the municipals again attack Boston Edison Company's overall earning figures. (N. B.: no mention is made of Edison's return on the sales to the municipals.) They present an Appendix A prepared by the consulting firm of Van Scoyoc and Wiskup, Inc., certainly a firm which should be knowledgeable in Federal Power Commission rate matters, which purports to show an increase from an Edison return of 8.1% reported in the Commission's 1968 statistics to an Edison return of 8.5% for 1969 (page 7).

First, the Commission makes it clear that the returns, as calculated by its staff in the annual statistics, are "not intended as an evaluation of the reasonableness of the earnings of any electric utility company under the applicable state or local regulatory standards". Secondly, we think it only proper, if the return for 1969 is to be compared with the staff's calculation for 1968, that the Commission's formula as spelled out in its

statistics, be used. The municipals, however, departed from that formula, obviously, to exaggerate the claimed Edison return for 1969. For example, in the municipals computations:

- (1) the accumulated deferred income taxes resulting from accelerated amortization is deducted from rate base. This is contrary to the method used in the FPC statistics and to staff practice in rate cases;
- (2) the municipals use an average of beginning and year-end balance of liberalized depreciation for deduction from the rate base. As is explicitly stated, the FPC statistics use the beginning of the year balance;
- (3) the municipals deduct accumulated investment tax credits from rate base contrary to the FPC format;
- (4) the municipals deduct contributions in aid of construction applicable to steam heat;
- (5) the municipals include as cash working capital an amount of \$7,462,303. The formula of the FPC statistics results in a sum over \$2 million higher.

In addition to the above departures from the FPC formula, there are others which may not be as readily obvious to the municipals' consultants from the Form 1, such as the reduction from the provision for deferred taxes of amounts representing the excess of straight-line depreciation over tax depreciation on certain assets. There are, of course, further questions as to what formula will be appropriate to use

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in the future for Federal Power Commission statistics to reflect the recent Internal Revenue Code amendments.

### III

The municipals further point to Edison's prognostication for 1970 as not indicating any downward swings in its earnings and net revenues. Even though, again, the Company does not believe such matters are relevant, it is worth discussing this point because it illustrates just why the municipals are completely wrong when they state that "Edison will suffer no substantial injury" if their "emergency" motion is granted.

The statement in the report to shareholders was that

"Earnings per share increased 30 cents in the first quarter of 1970. This represents normal growth plus the fact that in the first quarter last year we experienced 17 cents of non-recurring costs from the adverse impact of two storms and a prolonged loss of generating capacity."

The balance sheet reveals that the increase in interest charged to construction in the first quarter of 1970 over the first quarter of 1969 amounts to \$1,080,000 or 14 cents a share. Thus, of the 30 cent increase in earnings, only 16 cents represented dollars available to meet new expenditures. Boston Edison must, of course, be prepared continuously to make very substantial new expenditures if it is to continue to fulfill its public utility responsibility to meet the demands for electricity in its service area.

Similarly, for the twelve months ending March 31, 1970, the interest charged to construction was \$6,877,000 as compared with

\$3,175,000 for the corresponding period ending in 1969. The difference of \$3,700,000 accounts for nearly 80% of the total \$4,700,000 increase in income before extraordinary items. Thus, of the 61 cent increase in earnings per common share, nearly 50 cents was the result of a large increase in the amount of interest charged to construction. Net income after interest expense but before interest charged to construction showed a 5.1% increase for the twelve months ending March 31, 1970.

#### CONCLUSION

The municipals declare a "financial emergency" and request relief. They do not support their declaration with facts, because the facts are not there. By a very questionable use in a footnote of a few figures which they do not explain to the Commission, they ask the Commission to infer the "emergency". They make no attempt to enlighten the Commission on either 1) their true financial status, 2) their true situation under state law or 3) the explicit relief available to them under state law, if and when they have a financial emergency.

Although, by now, somewhat accustomed to what it considers exaggerations in pleadings by certain of its customers, the Company is constrained to observe that this motion, asking "emergency" relief, would indicate a disregard for elementary standards of candor.

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WHEREFORE, the Motion for Emergency Amendment of Order  
should be denied.

Respectfully submitted,

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May 13, 1970

BACKGROUND

Municipal accounting is quite different from the accounting required of investor-owned utilities. The accounts of the five Municipalities involved here also reflect certain differences between one another in accounting practices and financial procedures.<sup>1/</sup> (See Appendix B.)

The only financial data in support of a "financial emergency" given by the Municipalities is in a footnote on page 4 of the motion. It should be noted, first, that the Rate S-1 Increase column for Norwood, Concord and Wellesley reflect a twelve month period ending March 31, 1971 and not 1970 as stated. The correct figures would be \$312, 583.70, \$169, 674 and \$226, 921, respectively. See comparative billing data submitted by the Company, January 30, 1970. Application of figures on a consistent basis would have increased the profit margin of these Towns.

Second, it should be noted that for certain municipalities the "Excess: Revenues Over Expenses" column is net of bond retirements in addition to depreciation. Thus Reading, at year end 1969, with net utility plant of \$3, 744, 030.36 and outstanding debt of \$254, 000, reflects in expenses on page 4 of the motion depreciation of \$344, 954 and payments on bonds of \$42, 000 for a "Net Retained" after "Payments in lieu of taxes" of \$399, 991. From Operating Income the reported figure for Reading deducts the bond repayment and all interest expense, but does not reflect

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<sup>1/</sup> All references are to the annual reports filed with the Massachusetts Department of Public Utilities except where noted.

interest income on funds on hand, including the depreciation fund, more than sufficient to offset these deductions. The actual increase in earned surplus reported by Reading for 1969 was \$481,487.23 for a total of \$3,730,830.59. As noted in its report to the town, its construction program is being paid for by funds which have been internally generated.

The "revenue over expenses" figure for Wakefield does not appear to have deducted the \$5,000 bond repayment made by Wakefield, which leaves it with \$5,000 in bonds outstanding against a net electric plant of \$1,180,251 and earned surplus of \$1,993,333 (applicable to both electric and gas operations, evidently; net gas plant was \$458,688.76), after its payment "to town for reduction of real estate taxes."

Norwood's 1969 report to the Massachusetts DPU was not available but from the town report it is clear that interest, \$110,000 in bond repayments, as well as \$167,997 in depreciation, was deducted from Operating Income to arrive at the motion's figure of \$408,254. After its bond issue in 1969, Norwood reports \$3,015,000 in outstanding bonds, Utility Plant in Service of \$3,683,089 and Fund Accounts containing \$2,964,303; earned surplus after capital appropriations was a deficit of \$18,725.02.

Wellesley reports no bonded indebtedness against a net plant of \$4,692,583 and earned surplus of \$5,152,324. Concord does not deduct its \$10,000 debt repayment (\$60,000 outstanding) before reporting its appropriation "to Reduce Tax Levy". It had a net plant of \$2,012,954 and unappropriated earned surplus of \$1,954,053, plus construction work in progress of \$580,746.

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**§ 57. Manager's annual financial report; tax levy; expenditure of income**

At the beginning of each fiscal year, the manager of municipal lighting shall furnish to the mayor, selectmen or municipal light board, if any, an estimate of the income from sales of gas and electricity to private consumers during the ensuing fiscal year, and of the expense of the plant during said year, meaning the gross expenses of operation, maintenance and repair, the interest on the bonds, notes or certificates of indebtedness issued to pay for the plant, an amount for depreciation equal to three per cent of the cost of the plant exclusive of land and any water power appurtenant thereto, or such smaller or larger amount as the department may approve, the requirements of the sinking fund or debt incurred for the plant, and the loss, if any, in the operation of the plant during the preceding year, and of the cost, as defined in section fifty-eight, of the gas and electricity to be used by the town. The town shall include in its annual appropriations and in the tax levy not less than the estimated cost of the gas and electricity to be used by the town as above defined and estimated. By cost of the plant is intended the total amount expended on the plant to the beginning of the fiscal year for the purpose of establishing, purchasing, extending or enlarging the same. By loss in operation is intended the difference between the actual income from private consumers plus the appropriations for maintenance for the preceding fiscal year and the actual expense of the plant, reckoned as above, for that year in case such expense exceeded the amount of such income and appropriation. The income from sales and the money appropriated as aforesaid shall be used to pay the annual expense of the plant, defined as above, for the fiscal year, except that no part of the sum therein included for depreciation shall be used for any other purpose than renewals in excess of ordinary repairs, extensions, reconstruction, enlargements and additions. The surplus, if any, of said annual allowances for depreciation after making the above payments shall be kept as a separate fund and used for renewals other than ordinary repairs, extensions, reconstruction, enlargements and additions in succeeding years; and no debt shall be incurred under section forty for any extension, reconstruction or enlargements of the plant in excess of the amount needed therefor in addition to the amount then on hand in said depreciation fund. Said depreciation fund shall be kept and managed by the town treasurer as a separate fund, subject to appropriation by the city council or selectmen or municipal light board, if any, for the foregoing purpose. Upon his own initiative or upon the request of the city council, selectmen or municipal light board, the treasurer shall invest or deposit the same as permitted by section fifty-five A of chapter forty-four, and any income thereon shall be credited to the depreciation fund. So much of said fund as the department may from time to time approve may also be used to pay notes, bonds or certificates of indebtedness issued to pay for the cost of reconstruction or renewals in excess of ordinary repairs, when such notes, bonds or certificates of indebtedness become due. All appropriations for the plant shall be either for the annual expense defined as above, or for extensions, reconstruction, enlargements or additions; and no appropriation shall be used for any purpose other than that stated in the vote making the same. No bonds, notes or certificates of indebtedness shall be issued by a town for the annual expenses as defined in this section. As amended St.1963, c. 347, § 3.

...

**§ 57A. Appropriations for maintenance and operation; payment in advance of receipts.** Any city or town having a municipal light plant may appropriate money for the maintenance and operation of such plant, specifying that the same shall be taken from the receipts of the department; and where such appropriations are made, the city or town treasurer may, in advance of the collection of said receipts, pay bills on account of the said appropriations, and any sum so advanced shall be repaid to the city or town from such receipts, when collected, and shall be applied as reimbursement to the city or town, or to the payment of any temporary loan made by the city or town in anticipation of revenue of that year.

**§ 58. Schedule of prices for gas and electricity**

There shall be fixed schedules of prices for gas and electricity, which shall not be changed oftener than once in three months. Any change shall take effect on the first day of a month, and shall first be advertised in a newspaper, if any, published in the municipality. No price in said schedules shall, without the written consent of the department, be fixed at less than production cost as it may be defined from time to time by order of the department. Such schedules of prices shall be fixed to yield not more than eight per cent per annum on the cost of the plant, as it may be determined from time to time by order of the department, after the payment of all operating expenses, interest on the outstanding debt, the requirements of the serial debt or sinking fund established to meet said debt, and also depreciation of the plant reckoned as provided in section fifty-seven, and losses; but any losses exceeding three per cent of the investment in the plant may be charged in succeeding years at not more than three per cent per annum. The gas and electricity used by the municipality for any purpose except street lighting shall be charged for in accordance with the rates in the fixed schedules. The gas and electricity used by the municipality for street lighting shall be charged for at a cost to be determined as follows: the sum of all operating expenses, interest on the outstanding debt, the requirements of the serial debt or sinking fund established to meet said debt, and also depreciation of the plant reckoned as provided in section fifty-seven, and losses, shall be the dividend; the kilowatt hours sold including those supplied for street lighting shall be the divisor, and the resulting quotient multiplied by the kilowatt hours supplied for street lighting shall be the cost to be charged to the municipality for street lighting. In lieu of the method of determining charges for electricity used by the municipality for street lighting, as set forth in the preceding sentence, electricity so used may be charged for at a cost in accordance with a street lighting schedule filed with and approved by the department. As amended St.1954, c. 401.

**§ 58A. Advance deposit; shut off for non-payment; removal of appliances for distribution.** A sufficient deposit to secure the payment for gas or electricity for three months may be required in advance from any consumer, and if such advance deposit is retained for a longer period than six months, interest at the rate of four per cent per annum shall be paid annually to said consumer or credited to his account. The supply may be shut off from any premises until all arrears for gas or electricity furnished thereon to such consumer shall have been paid. After three months default in the payment of such arrears, all appliances for distribution belonging to the municipality on the premises may be removed and shall not be restored except on payment of all such arrears and the expenses of removal and restoration.

**§ 59. Notice of change of price to department.** When a town fixes or changes a price, a notice thereof in form specified by the department shall be filed within sixty days with the department by the manager of municipal lighting, and for the failure to do so he shall forfeit not more than twenty-five dollars. As amended St.1953, c. 502.

R- 709

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;  
Lawrence J. O'Connor, Jr., Carl E. Bagge,  
John A. Carver, Jr., and Albert B. Brooke, Jr.

Municipal Light Boards of ) Reading and Wakefield, Massachusetts, ) Complainants, )	)	
v. )	)	Docket No. E-7400
Boston Edison Company, )	)	
Respondent. )	)	
Norwood Municipal Light Department, ) Norwood, Massachusetts, ) Complainant, )	)	
v. )	)	Docket No. E-7517
Boston Edison Company, )	)	
Respondent )	)	
Boston Edison Company		Docket Nos. E-7485 and E-7533

ORDER DENYING JOINT MOTION FOR  
EMERGENCY AMENDMENT OF ORDER  
(Issued May 26, 1970)

This order denies a motion to modify the suspension period contained in our order issued April 29, 1970.

By order issued April 29, 1970, we, inter alia, suspended a proposed increase in rates tendered by Boston Edison Company (Edison) for one day until May 1, 1970. On May 8, 1970, the Municipal Light Boards and Departments of the Towns of Reading, Wakefield, Concord, Norwood, and Wellesley, Massachusetts (Municipalities) filed a joint motion requesting the Commission to amend its order of April 29, 1970, so as to suspend and defer the increased rate until July 1, 1970, in order to permit them time to place in effect increases in their retail rates tracking Edison's increase to them.<sup>1/</sup>

<sup>1/</sup> Our suspension order is not an appealable order under Section 313 of the Federal Power Act. Thus, the joint motion is not, and should not be construed as, a petition for rehearing. The joint motion seeks reconsideration of a suspension order and is treated as a motion for reconsideration.

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In support of their motion, the Municipalities contend that the one-day suspension has created a financial emergency which requires at least two months for them to track Edison's increase into their retail rates. They state that without this additional time they will be forced to operate at a deficit or substantial loss. The Municipalities assert that they had anticipated a full 5-month suspension of Edison's proposed increase which period would have permitted them to make the necessary adjustments in their retail rates. They now assert that July 1, 1970, is the earliest reasonable date for them to implement changes in their retail rates. Further, the Municipalities contend that "equitable considerations" dictate that a period of time be given that would be sufficient for them to adjust their rates and that any injury that Edison might experience with a 5-month suspension period would only be one that was contemplated by Congress when it wrote the 5-month suspension period into the Federal Power Act.

Edison, on May 13, 1970, filed its answer to the Municipalities' motion and requested denial of that motion. Edison challenges the Municipalities' contention that a financial emergency will result from the one day suspension. Edison states that, even if a temporary deficit may occur for May and June 1970, rate relief is available under Massachusetts law which would permit the Municipalities to recoup that loss over the remainder of the year. Additionally, Edison points out that, while the increased rates are to be effective May 1, 1970, billings under the new rates will not be made until June 1970. The Municipalities, on the other hand, can implement their rate changes immediately after permission has been obtained for those changes. Thus, Edison claims that the emergency situation claimed by the Municipalities is unsupported and unfounded.

The motion and answer present a factual difference as to whether a financial emergency exists because of the one-day suspension ordered by us. However, that difference is not crucial to determination of the issue involved here. It appears that relief is available to the Municipalities under State law even to the extent of recouping any losses that may result from the time lag of tracking Edison's increase into their retail rate structure. On the other hand, any relaxation of our one day suspension period will result in an irretrievable loss to Edison. Furthermore, the increased rates are being collected by Edison subject to refund of any amounts found unjustified at an interest rate of 8%. Under these circumstances, we believe that the public interest is best served by our determination to suspend the increased rate for one day.

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On May 13, 1970, Boston Gas Company (Boston Gas) filed its response and support of the Municipalities' motion. Boston Gas states that it too cannot fully track Edison's increase unless the Massachusetts Department of Public Utilities waives the normal waiting period to permit Boston Gas' increase to go into effect at an earlier date. Boston Gas contends that it had no reason to seek any emergency relief since it expected the Commission to suspend Edison's increase for the five-month period. In addition, Boston Gas states that it had good reason to believe that, at a minimum, the increase would not become effective until May 31, 1970, since Edison did not seek waiver of the 60-day notice provision of Section 35.13 (b) (4)(i) of our Regulations (18 CFR 35.13(b)(4)(i)). However, with the additional data required to complete its filing, Edison, by letter dated and filed March 30, 1970, requested the Commission to assign a filing date to its rate schedule and to permit that rate schedule to become effective 30 days thereafter. That request was, in essence, a request for waiver of our 60-day notice provision under the Regulations. The legal effect of our order was to waive the notice provision which action was consistent with our determination to suspend Edison's proposed rate increase filing for one day. Any other action would require Edison to defer collection of its increased rates which we found, and still find, to be inimical to the public interest.

The Commission further finds:

Good cause exists to deny the joint motion filed by the Municipalities on May 8, 1970, for amendment of our order issued April 29, 1970 in these proceedings.

The Commission orders:

The joint motion filed by the Municipalities on May 8, 1970, requesting an emergency amendment of our April 29, 1970, order is hereby denied.

By the Commission. Commissioner Carver dissenting  
( S E A L )      filed a separate statement  
                              appended hereto.

Gordon M. Grant,  
Secretary.

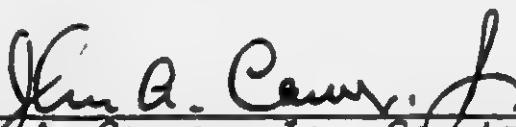
Municipal Light Boards of )	
Reading and Wakefield, Massachusetts, )	
Complainants,) )	Docket No. E-7400
v. )	
Boston Edison Company, )	
Respondent.) )	
Norwood Municipal Light Department, )	
Norwood, Massachusetts, )	
Complainant,) )	
v. )	Docket No. E-7517
Boston Edison Company, )	
Respondent.) )	
Boston Edison Company )	Docket Nos. E-7485
)	and E-7533

(Issued May 26, 1970)

**CARVER, Commissioner dissenting:**

My dissent to the original order in this proceeding is unaffected by the attempted justification set forth in the current order. The Commission persists in its discriminatory treatment of the complainants; I must continue to object.

The present order adds a new objectionable element to the case. In answer to the Boston Gas allegation that the order issued April 29, 1970 violated the Commission's own Rules of Practice, the present order proceeds on a theory that there had been a waiver of the regulation in question. It is clear beyond doubt that the Commission could have waived the time requirements involved, but I think the plain fact is that it did not. Waiver of a regulation having the effect of law is not a matter to be taken lightly: to me, it requires a conscious, affirmative and specific intent and action thereon. The fact is that Section 35.13(b)(4)(i) of the Regulations played no part in the consideration of this matter. A waiver may not be constructed out of an action which merely ignores the regulation.

  
John A. Carver, Jr., Commissioner

R 713

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Municipal Light Boards of )  
Reading and Wakefield, Massachusetts, )  
Complainants, ) Docket No. E-7400  
v. )  
Boston Edison Company, )  
Respondent )  
  
Norwood Municipal Light Department, )  
Norwood, Massachusetts, )  
Complainant, ) Docket No. E-7517  
v. )  
Boston Edison Company )  
Respondent )  
  
Boston Edison Company ) Docket Nos. E-7485,  
) E-7533

APPLICATION FOR REHEARING

Pursuant to Section 313(a) of the Federal Power Act and Section 1.34 of the Commission's Rules of Practice and Procedure, the Municipal Light Boards and Departments of the Towns of Reading and Wakefield ("Towns") through their attorney hereby apply for rehearing of the Commission's Order issued April 29, 1970 in the above entitled proceedings. In support thereof the Towns respectfully show as follows:

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I

## BACKGROUND

The Towns own and operate municipal retail electric distribution systems and purchase their total power supplies from Boston Edison Company ("Edison") at wholesale rates under the jurisdiction of the Federal Power Commission. They provide the total service within their borders, while Reading also serves adjoining communities. The cost of power supply accounts for approximately 55% of the total electric revenues collected by the Towns.

Edison, on January 29, 1970, tendered for filing its rate schedule General Services for Resale, Rate S-1, stating that it was to supersede the then effective M rate under which the Towns were buying power from Edison (Docket E-7485). The Towns filed motions to reject the submission on February 24 and April 22, 1970, <sup>\*/</sup> and on February 26, 1970, a formal letter opposing acceptance for filing. In addition, they sought a 5-month suspension of

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<sup>\*/</sup> Motion to Reject Submission of Rate Change, February 24, 1970; Motion to Reject Rate Change Submission on Service Grounds, April 22, 1970.

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the Rate S-1 if accepted for filing. The Commission found in its order issued April 29, 1970, that "The proposed increased rates and charges contained in Rate S-1 have not been shown to be justified and may be unjust, reasonable, unduly discriminatory or preferential, or otherwise unlawful under the Federal Power Act" (page 18) and instituted an investigation into these rates.

The Commission also accepted the Rate S-1 for filing as of April 30, 1970 and directed that it be suspended for only one day, thereafter to be effective, i.e. on May 1, 1970, subject to refund, with interest, of the increased charges ultimately found to be not justified.

On May 8, 1970, the Towns jointly with the Municipal Light Boards and Departments of Concord, Norwood and Wellesley, and without waiving their rights to file the instant Application for Rehearing, moved the Commission for an emergency amendment of its April 29 Order, on the grounds that this Order has enacted a financial emergency for them. As shown in that motion, the effect of the Order is immediately to increase the cost of power to the five municipalities joining in that motion by approximately

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20 percent, a combined total of approximately \$1,517,000 a year. The amount of the increase in each case approximates the municipalities' 1969 net operating income, before payments in lieu of taxes\* and is substantially in excess of such net operating revenues after payments in lieu of taxes. As a result, permitting the rate increase to be effective with only one day suspension placed the municipalities in the position of operating at a deficit or a substantial loss until their retail rates can be effectively increased by the amount of the increased power supply

	<u>1969</u>				<u>Rate S-1:</u>
	<u>Excess: Revenues Over Expenses</u>	<u>Payments in lieu of taxes</u>	<u>Net Retained</u>	<u>Months ending March 31, 1970</u>	
	( <u>\$</u> )	( <u>\$</u> )	( <u>\$</u> )	( <u>\$</u> )	
Reading	641,833	241,842	399,991	534,411	
Wakefield	202,420	202,420	0	188,433	
Norwood	408,254	0	408,254*	357,486	
Concord	246,287	80,315	165,972	187,485	
Wellesley	283,594	0	283,594	249,644	

\*The Utility Department of Norwood does not retain these funds, rather they are paid into the town treasury. Budgeting and disbursements are administered by the treasurer.

Note: Financial needs of 3 municipals are increased because of pending capital expansions: Reading \$1.3 million and Norwood \$3.3 million for 115 kv interties; Wellesley, \$1.3 million general system upgrading.

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charges which the Commission has permitted Edison to collect for services on and after May 1, 1970. By Order of May 26, 1970 the Commission denied this joint motion.

## II

### GROUNDS UPON WHICH APPLICATION IS BASED

The grounds upon which this application is based are as follows:

1. The Commission erred in denying the Towns' motion of February 24, 1970 to reject the submission of the proposed rate change without stating any reason or basis for the denial.

2. The Commission erred in accepting for filing Edison's rate schedule General Service for Resale, Rate S-1, in that the submission fails to comply with the Commission's Regulations under the Federal Power Act, in several substantial matters, viz:

(a) The submission does not comply with Section 35.13 of these Regulations in that Edison does not compare sales, service, and revenues for Reading purchases at 115 kv for the 12 months succeeding the proposed effective

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date of April 1, 1970:(i) between prepared Rate S-1 and the "superseded" Rate M, nor (ii) between proposed Rate S-1 and "superseded" Rate N-1. <sup>\*</sup> The only comparison made is for 13.8 kv service between Rate S-1 and Rate M. Reading has committed or expended a total of \$1,300,000 in order to interconnect at 115 kv. It will be ready to take 115 kv service by August, 1970 and must have such service by November, 1970. The difference in revenues to Edison and costs to Reading as between 13.8 kv and 115 kv service for Reading may well exceed \$400,000 a year.

(b) The Commission erred in its Order of April 29, 1970 by setting May 1, 1970 as the effective date <sup>\*\*</sup> for the rate increase. At page 2 of its Order dated

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<sup>\*</sup>/ Original Sheet No. 1 describes the new rate as "Superseding Wholesale Electric Utility Rate M . . . and High Tension Wholesale Municipal Rate N-1 . . ."

<sup>\*\*</sup>/ Section 35.13(b)(4)(i) states in part: "Except as provided in subdivision (ii) of this subparagraph, if the rate schedule provides for an increased rate, then 60 days prior to the date that such changed rate is proposed to become effective the filing public utility shall submit a statement showing its cost of the service to be supplied under the new rate schedule according to supporting statements A through O as described below."

Subdivision (ii) waives the requirements of subdivision (i) if the annual rate increase is less than \$50,000.

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April 29, 1970 the Commission notes: "Edison's tender was deficient under our Regulations and was not completed until March 30, 1970. At that time, Edison requested that Rate S-1 be made effective 30 days after completion of filing, i.e., April 30, 1970." The Commission's Order making May 1 the effective date for Rate S-1, without expressly considering and waiving its provisions, is in violation of Section <sup>\*/</sup> 35.13(b)(4)(i). Edison, therefore, should not have been granted an effective rate increase until 60 days following March 30, 1970, i.e., May 31, 1970.

(c) Rate S-1 does not "clearly and specifically" set forth the terms for "interim 115 kv service" during the changeover from 13.8 kv to 115 kv <sup>\*\*/</sup> service , but rather leaves the matter ambiguous. Reading is thus impeded in planning its investments during this interim period, and, irrespective of the

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\*/ Commissioner Carver in his dissent to the Commission's Order dated May 26, 1970, Denying Joint Motion for Emergency Amendment of Order properly declared: "It is clear beyond doubt that the Commission could have waived the time requirements involved, but I think the plain fact is that it did not. Waiver of a regulation having the effect of law is not a matter to be taken lightly: to me, it requires a conscious, affirmative and specific intent and action thereon. The fact is that Section 35.13(b)(4)(i) of the Regulations played no part in the consideration of this matter. A waiver may not be constructed out of an action which merely ignores the regulation."

\*\*/ Original Sheet No. 15, Exhibit B.

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economic advantages which might accrue to both parties by a step-by-step conversion of circuits, Reading must convert to 100% 115 kv service as rapidly as it is able in order to avoid possible substantial surcharges during the transitional period.

(d) Edison has not stated its accumulated depreciation, or its annual depreciation expense, by functional classifications as required by the Regulations. Indeed, the filing discloses that Edison has never complied with the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licenses in this regard <sup>\*</sup> or the requirements of the Form 1 Annual Report. Functionalizing depreciation involves recording this item as between the functional classifications: Production, Transmission, Distribution, etc. A major issue in this case is the determination of costs as between the transmission level for 115 kv service, and the distribution level for 13.8 kv service. This cannot be accomplished without all the major costs affecting

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<sup>\*</sup> / Section 35.13(b)(4)(iv), Statements E & I.

<sup>\*\*</sup> / FPC Account Nos. 108, 403.

<sup>\*\*\*</sup> / Page 429, Instruction 1; FPC Regulations, Section 141.1.

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items being functionalized; accumulated depreciation and depreciation expense are among the most important of these items.

(e) Edison has failed to show the basis for the changes in its methods of determining the wholesale rates here proposed. While Edison purports to use FPC methods in determining the wholesale cost of service, it disclaims these as the basis for its rate determinations. In short, Edison shows only the methods it has not used. Thus, it has not complied with the Commission's requirement that it "state the reasons for the proposed changes" as required by Section 35.13 of the Commission's Regulations.

(f) Rate S-1, when applied to a range of industrial retail loads which could be served by the Towns, is higher than Edison's large industrial retail sales Rate G. Rate S-1 places the Towns, along with Edison's other wholesale customers, at a disadvantage in competing for industrial business and thus is unduly discriminatory.

(g) Rate S-1 contains unfair and improper restrictions on the ability of a customer to

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convert from 13.8 kv to 115 kv service. Such restrictions include special charges for facilities which properly should be included in general system costs.

3. The Commission erred in accepting for filing Edison's rate schedule General Service for Resale, Rate S-1, in that the terms and conditions of that rate schedule are contrary to the policies and provisions of the antitrust laws in the following substantial respects:

(a) The filing prohibits the resale of power purchased under Rate S-1 to other utilities for resale without Edison's consent. This is an unlawful restraint violative of the spirit, if not the letter, of the antitrust laws. The force of the restraint is not alleviated by the further provision that Edison will consider a customer request and "advise" as to Edison's "ability" to supply electricity and the "applicable rate schedule or its best estimates of charges for such service." These criteria are so broad as to allow Edison complete freedom to respond in any way which may suit its interests - leaving the wholesale customer with no alternative other than years of

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pursuing a complaint proceeding before the Commission limited to prospective relief.

(b) The requirement for 5 years notice unlawfully restricts the customer from obtaining competitive service at lower cost. On the other hand, while Edison may need some protection from sudden increases or decreases in loads of its resale customers, Edison does not need five years notice. A substantially shorter time will do, since its annual load growth is about as large as the total load represented by its distributor-utility customers.

(c) The failure to define the duration of "reasonable notice . . . no less than two (2) years . . ." for the installation of peaking generation for 20% of load, unlawfully restricts the customer from developing even this limited generation.

(d) The filing would prohibit a customer from purchasing electricity from other sources, and from installing generation other than peaking generation of less

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\*/ Original Sheet No. 14, Exhibit C, Par. A.

\*\*/ Original Sheets Nos. 14-15, Exhibit C, Par. B.

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than 20% of load. <sup>\*</sup> This is an unlawful restriction, and this is not alleviated by Edison's undertaking, upon 5 years notice, to make available a partial requirements rate or an estimate of charges. Such purported right is largely illusionary since the partial requirements rate is not included in the filing. This further incompleteness constitutes an additional reason why it is error not to reject Edison's submission. As a result of this omission Edison retains the ability to suppress any arrangements which may be advantageous to their wholesale customer and keep the status quo by proposing an unreasonable partial requirements rate. In contrast, the customers need the flexibility now which these provisions would so severely inhibit, since bulk power is now being offered to all utilities in New England.

4. The Commission erred in failing to state any reason or basis for denying the Towns' April 22, 1970 Motion to Reject Rate Change Submission on Service Grounds insofar as the motion sought rejection of the rate change

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<sup>\*</sup> / Original Sheet No. 11, Exhibit B, "Applicability"; Original Sheet No. 18, Exhibit C, Par. C.

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submission or inquiry prior to assignment of a filing date  
(See Commission's Order of April 29, 1970, page 8).

5. The Commission erred in accepting for filing  
a substantial unilateral increase in rates where it appears  
that Edison is not furnishing a utility grade of service  
<sup>\*/</sup>  
in the following important respects, viz:

(a) Voltage reductions, on a system-wide  
basis, have become frequent and substantial, and appear  
to be on the increase.

(b) Edison has notified its customers  
that service interruptions can be expected over a large  
part of its system, including the 5 municipal wholesale  
customers.

(c) Edison has declined to give Reading  
a commitment that it will interconnect at 115 kv by November,  
1970 although Edison will be unable to provide firm whole-  
sale service for Reading's requirements, unless such  
interconnection is accomplished.

6. The Commission erred in accepting for filing  
Rate S-1 because it is incomplete, in that a related partial  
requirements rate and transmission rate are now essential

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\*/ See Motion to Reject Rate Change Submission on Service  
Grounds, filed April 22, 1970, on behalf of the Towns.

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in view of the opportunities which have now emerged for purchasing bulk power from New Brunswick, Northfield Mountain, Vermont Yankee and Maine Yankee projects. These sources of bulk power will be available in 1971 and 1972 to utility systems throughout New England; and, lacking a definition of the rates, terms and conditions applicable to such complementary power sources, Edison's wholesale customers remain captive without alternatives to accepting this substantial 20% increase in rates. The result is to insulate Edison from competition contrary to the rulings recognizing the value and propriety of competition even with respect to regulated companies. Northern Natural Gas Co. v. F.P.C., 399 F. 2d 953; S.E.C. v. New England Electric System, 384 U.S. 176; California v. F.P.C., 369 U. S. 482; Municipal Electric Ass'n of Mass. v. S.E.C., 413 F. 2d 1052, (D.C.Cir. 1969); Municipal Electric Ass'n of Mass. v. F.P.C., 414 F. 2d 1206, (D.C.Cir. 1969); and City of Statesville, et al v. A.E.C., Nos. 21,706, 21,244 (D.C. Cir., decided December 5, 1969).

7. The Commission erred in refusing to suspend the rate increase for the 5 months authorized under Section 205(e) of the Federal Power Act, and in suspending the rate increase for only 1 day, without stating any reason or basis for its

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action. As pointed out in the dissent of Commissioner Carver, the Commission had long recognized that, in the absence of exceptional circumstances, rate increases of the magnitude here involved should, and properly are to be suspended for the full 5-month statutory period. The Commission's action here limiting the suspension of the Rate S-1 to only one day violates this long-standing practice, which has become in effect a gloss upon Section 205 (e) of the Federal Power Act (and the comparable Section 4(e) of the Natural Gas Act). Cf. City of Detroit v. F.P.C., 230 F. 2d 810, 818 (D. C. Cir. 1955), cert. denied, 352 U.S. 829 (1952). Moreover, it results in discrimination against the wholesale customers of Boston Edison in violation of Section 205(a) of the Power Act. It is now so well settled as to be hornbook law that, far from being unfettered, any discretion delegated by Congress to the Commission may be exercised only in a manner which is reasonable and consistent with the purposes of the Act.

8. The Commission erred in suspending the rate increase for only one day in that there is a complete absence of findings demonstrating the requisite exceptional

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circumstances or otherwise justifying the unusual treatment accorded to Boston Edison's Rate S-1 here involved. The facts are to the contrary. Thus, as pointed out earlier the Rate S-1 operates to increase the Towns' cost of purchased power by a substantial 20 percent, which approximates or exceeds the Towns' operating margins. The effect of limiting the suspension period to only one day is: (i) to create a financial crisis for the Towns for the period until they are able to put in effect the requisite increase in their retail rates; and (ii) to require their customers to bear the burden of these higher rates for what normally would have been the remainder of the 5-month suspension period as well as for the period thereafter until the Commission makes a final determination as to the lawfulness of the Rate S-1. On the other hand, Edison will suffer no substantial injury, other than the loss of the possibility of collecting revenues in excess of an overall reasonable rate of return, should the suspension be enlarged. Indeed, any injury that Edison could possibly suffer would clearly be of the nature anticipated in such situations contemplated by Congress when it nevertheless provided for a 5-month suspension of rate increases. See Hope Natural Gas Co. v.

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F.P.C. 196 F. 2d 803 (4th Cir., 1952).

The Commission's statistics show that Edison is earning the highest rate of return in its current history - rising steadily from 7.07% in 1964 to 8.1% in 1968. <sup>\*/</sup> Edison's 1969 Annual report to its stockholders shows its earnings per share have risen to \$3.10 from the 1968 level of \$2.90. This trend continues. Earnings for the first quarter of 1970 were reported at 97¢ per share, up from 67¢ per share in the corresponding quarter in 1969. Significantly, Edison earned these rates of return without the increased revenues involved in its S-1 rate. Edison's own adjusted cost of service - giving full weight to all of their claims - would leave Edison with an overall rate of return of 7.63%, which would be increased to 7.84% by the Rate S-1 increase. Thus, for Edison it is only a matter of increasing an already excessive overall rate of return. Irrespective of Edison's claims as to its return on the wholesale customers, there is no program to simultaneously pass on to the retail customers the overall excessive return. Thus, the case for a full 5-month suspension

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<sup>\*/</sup> FPC, Statistics of Privately Owned Electric Utilities in the United States, 1967 and 1968, p. 653.

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here is at least as strong as, if not stronger than, those typically surrounding rate increases filed under Section 206 of the Federal Power Act (and Section 4(e) of the Natural Gas Act) under which the Commission has been suspending rate increase filings for full statutory period virtually as a matter of course.

9. The Commission erred in suspending the Rate S-1 for only one day rather than the full 5 month statutory period in that it upsets the balance which Congress sought to strike between the interests of the regulated company on the one hand and those of its customers and their consumers on the other. The Supreme Court pointed out in Arrow Transportation Co. v. Southern Ry. Co., 372 U. S. 658, 662-669 (1963), with regard to the suspension provision of the Interstate Commerce Act, from which Section 205 is derived (see Hope Natural Gas Co. v. F.P.C., 196 F. 2d 803, 806-7 (4th Cir. 1952)), that, when rate increases filed by a regulated company are of doubtful lawfulness, Congress intended the regulated company to bear the revenue losses

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\*/ In addition to the proceedings under the Power Act referred to by Commissioner Carver, the Commission has typically suspended for the full 5-month period the rate increase filings made by pipeline companies under the Natural Gas Act. This includes the several such rate filings which have been made in recent months.

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during the prescribed suspension period, and that its customers pay these rates thereafter, subject to refunds pending the issuance of an agency order determining their lawfulness.

The effect of the Commission's order suspending the S-1 rate for only one day is to upset this balance and place the entire burden of the new rates upon Boston Edison's wholesale customers and their consumers pending a determination as to the lawfulness of these rates. Although such payments are subject to refund, the Supreme Court has expressly recognized the inadequacy of refunds as a tool for making the customers and their consumers whole. See F.P.C. v. Tennessee Gas Transmission Co., 371 U.S. 145 (1962).

10. The Commission erred in restricting the suspension to only 1 day in that it does not allow a reasonable opportunity to most of the customers to redesign their rates and pass on the increase as appropriate.

11. The Commission erred in restricting the suspension to only 1 day in that it fails to provide the protection of the consumer which is required by the Federal Power Act and fails to utilize the suspension power in order

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to seek an expedited solution to all or part of the problems created by the filing - prior to the rates going into effect.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Commission should grant rehearing with respect to its Order issued April 29, 1970 in the above proceedings.

Respectfully submitted,

MUNICIPAL LIGHT BOARD AND  
DEPARTMENT OF READING,  
MASSACHUSETTS, and

MUNICIPAL LIGHT BOARD AND  
DEPARTMENT OF WAKEFIELD,  
MASSACHUSETTS

By James F. Fairman Jr.  
James F. Fairman, Jr.  
Their Attorney

Law Offices of:

George Spiegel  
2600 Virginia Avenue, N. W.  
Washington, D. C. 20037

May 28, 1970

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UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

PRACTICE AND PROCEDURE (Rehearing)

Before Commissioners: Albert B. Brooke, Jr., Acting Chairman;  
Lawrence J. O'Connor, Jr., and  
John A. Carver, Jr.

Municipal Light Boards of Reading And Wakefield, Massachusetts, Complainant,	)	
v.	)	Docket No. E-7400
Boston Edison Company, Respondent.	)	
Norwood Municipal Light Department, Norwood, Massachusetts, Complainant,	)	
v.	)	Docket No. E-7517
Boston Edison Company Respondent.	)	
Boston Edison Company	)	Docket Nos. E-7485 and E-7533

ORDER ACCEPTING TENDERED DOCUMENT, TREATING IT  
AS MOTION FOR RECONSIDERATION AND DENYING THAT MOTION  
(Issued June 26, 1970)

This order accepts the document tendered for filing by Municipal Light Boards and Departments of the Towns of Reading and Wakefield, Massachusetts (Towns) on May 28, 1970, treats it as a motion for reconsideration of our order issued April 29, 1970 and denies that motion.

On May 28, 1970, the Towns tendered for filing a document entitled "Application for Rehearing" which seeks rehearing of our order issued April 29, 1970, under Section 313(a) of the Federal Power Act and Section 1.34 of the Commission's Rules of Practice and Procedure. That order, however, was a procedural order that, inter alia, denied a motion to reject a rate increase filing, suspended that filing, and provided for a hearing on the lawfulness of the proposed rate increase. Accordingly, an application for rehearing under Section 313 (a) of that order does not lie. See, e.g., F.P.C. v. Metropolitan

Docket Nos. E-7400, et al. - 2 -

Edison Co., 304 U.S. 375, 383; Humble Oil & Refining Co. v. F.P.C., 334 F. 2d 1002, 1007 (CA3, 1964). Section 1.34 of our Rules does not enlarge the scope of appealable orders under the Federal Power Act. However, we shall treat the Towns' tender as a motion for reconsideration and shall, to the extent warranted, consider the substantive arguments advanced therein.

The arguments advanced by the Towns are arguments that have been urged in a number of filings made by them and other parties to this proceeding, which were considered and denied by us in our orders issued April 29 and May 26, 1970. In summary, they allege that we erred (1) by not rejecting the rate proposal, (2) by accepting it for filing, and (3) by suspending it for only one day. In their arguments, they assert procedural irregularities and substantive deficiencies as bases for contending that we should have rejected and not accepted for filing the rate proposal filed by Boston Edison Company (Edison). However, the substantive issues raised by the Towns, e.g., antitrust and anti-competitive contentions, quality of service rendered, etc., do not warrant rejection of this rate filing. Those matters may be relevant to the issue of rate level but are not relevant to the procedural issue of whether we should accept for filing or reject the rate increase proposal. This is especially true, as here, when the increased rates are being collected subject to refund. If the rate level is excessive, the Towns will receive refunds with interest. On the other hand, if we were to reject the rate proposal and then determine that the substantive contentions advanced by the Towns lack merit, Edison could not recover those lost revenues. In our judgment, the public interest requires adherence to the procedural decisions made in this proceeding.

The Commission finds:

(1) Good cause exists for accepting the document tendered by the Towns on May 28, 1970, and treating it as a motion for reconsideration.

(2) It is appropriate for purposes of the Federal Power Act that the motion referred to in (1) above be denied.

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Docket Nos. E-7400, et al. - 3 -

The Commission orders:

(A) The document entitled "Application for Rehearing" and tendered for filing by the Towns on May 28, 1970, is accepted and treated as a motion for reconsideration of our order issued April 29, 1970, in this proceeding.

(B) The Towns' motion for reconsideration of our order issued April 29, 1970, is hereby denied.

By the Commission. Commissioner Carver adheres to his  
( S E A L ) original views set forth in his  
dissenting statements appended to  
the orders issued April 29, 1970,  
and May 26, 1970.

Gordon M. Grant,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: Albert B. Brooke, Jr., Acting Chairman;  
Lawrence J. O'Connor, Jr., and  
John A. Carver, Jr.

Municipal Light Boards of Reading )	
And Wakefield, Massachusetts, )	
Complainant, )	Docket No. E-7400
v. )	
Boston Edison Company, )	
Respondent. )	
Norwood Municipal Light Department,)	
Norwood, Massachusetts, )	
Complainant, )	
v. )	Docket No. E-7517
Boston Edison Company, )	
Respondent. )	
Boston Edison Company )	Docket Nos. E-7485
	and E-7533

ORDER GRANTING MOTION IN PART, DENYING MOTION  
IN PART, AND INCORPORATING LIMITED ISSUE  
OF SERVICE QUALITY AND ADEQUACY INTO  
CONSOLIDATED PROCEEDING

(Issued June 26, 1970)

This order grants, to a limited extent, a request filed by Motion April 22, 1970, that the question of whether the quality and adequacy of Boston Edison Company's (Edison) wholesale electric service may affect the lawful rates to be charged for such service be investigated and incorporated as an issue in this consolidated proceeding.

The Motion was filed by the Municipal Light Boards and Departments of Reading and Wakefield, Massachusetts, (Municipalities). In it they requested rejection of

Docket Nos. E-7400, et. al. - 2 -

Edison's proposed Rate S-1 rate increase filing on the grounds that Edison is not furnishing a utility grade of electric service. Alternatively, the Municipalities requested the Commission to investigate the alleged inadequate electric service rendered by Edison, to give notice to the Massachusetts Department of Public Utilities and others of this matter, and to defer assignment of a filing date and acceptance for filing of the rate increase proposal.

By our Order issued April 29, 1970, we accepted the Rate S-1 rate schedule for filing, suspended its operation for one day, provided for public hearing on the lawfulness of that rate schedule (Docket No. E-7533) and consolidated that hearing with investigations of formal complaints filed by three of Edison's municipal customers (Docket No. E-7400, E-7517), and another proposed rate increase tendered by Edison which was suspended by order issued March 27, 1970 (Docket No. E-7485). In the April 29 order we also denied the Motion filed by Municipalities on April 22, 1970, insofar as that Motion requested rejection of Edison's Rate S-1 rate increase filing. As to the other relief requested in that Motion, we stated that we would consider the remainder of the Motion "following opportunity for answer by Edison." Thus, the issue remaining before us is Municipalities' request for an investigation and incorporation into this consolidated proceeding of the issue of the quality and adequacy of Boston Edison's wholesale electric service.

In support of the Motion, the Municipalities contend that the electric service from Edison has had frequent and substantial voltage reductions and that the frequency of those reductions is on the increase. They also contend that Edison officials are predicting major service interruptions during 1970 because of power supply and transmission problems and that Edison is planning to place limitations on the connection of new loads because of those expected interruptions. The Municipalities also contend that electric service

Docket Nos. E-7400, et. al. - 3 -

to the Town of Reading is further jeopardized by Edison's unwillingness to commit itself to the 115 kv interconnection which the parties had agreed upon for operation by November, 1969. Municipalities contend that rates must be related to service under the Federal Power Act and that when service is inadequate the utility is not entitled to increase its rates.

On May 4, 1970, Edison filed its answer requesting the Commission to deny the Motion to the extent that it was not previously denied by the order of April 29, 1970. In its answer, Edison states that not all of the voltage reductions are due to problems on Edison's own system, but rather, are area-wide reductions for the protection of the New England power grid. Edison also disputes, as a factual matter, the number and duration of voltage reductions set forth in the Motion. Further, Edison denies that it is responsible for the delay in constructing the transmission lines needed for reliable, uninterrupted service during the 1970 summer peak. Edison also asserts that it has diligently pressed to meet the completion date desired by Reading for the 115 kv interconnection.

In further response, Edison contends that the adequacy of service issue is not properly presented in a rate proceeding under the Federal Power Act.

To the extent that the Motion and Answer thereto raise questions involving adequacy and reliability of electric service in the New England area as a whole, we do not believe a rate investigation involving a single company in that region is a practical or appropriate forum for consideration of such issues, and these issues are specifically excluded from consideration in this proceeding. Order No. 383-2, issued April 10, 1970, provides an orderly means for Commission consideration of these questions.

Docket Nos. E-7400, et. al. - 4 -

However, the Motion raises service questions which involve Boston Edison alone, namely, the alleged failure to provide timely 115 kv service to Reading, possible limitations on power use and connection of new loads in the summer of 1970, and alleged voltage reductions which may be due in part to problems on Edison's own system. Edison states in its Answer that not all voltage reductions are due to problems on its own system, it does not deny that there may be voltage problems relating solely to its own system. Additionally, the Motion and Answer raise factual questions as to the number and duration of the voltage reductions alleged. It is appropriate that we consider in this proceeding whether interstate rates should be adjusted to reflect these specific alleged service inadequacies to the extent that they relate to Edison's system.

The Motion also seeks to invoke this Commission's authority under Section 207 of the Federal Power Act. We find it unnecessary to reach this question in light of Order No. 383-2 and our consideration in this proceeding of the local service questions described above.

The inclusion of this issue in the consolidated proceeding will occasion no change in the dates for service of Edison's case-in-chief and for cross-examination set by the Presiding Examiner at the prehearing conference held May 19, 1970.

The Commission further finds:

Good cause exists for granting the Municipalities' request for an investigation into whether the quality and adequacy of electric service rendered by Edison may affect the lawful rates to be charged for such service, except to the extent that it involves questions of the reliability and adequacy of electric service on a New England-wide basis, and to incorporate that issue into this consolidated proceeding as hereinafter ordered.

Docket Nos. E-7400, et. al. - 5 -

The Commission orders:

(A) The Motion filed by the Municipalities on April 22, 1970, is granted insofar as it requests an investigation into whether the quality and adequacy of electric service rendered by Edison to its wholesale customers may affect the lawful rates to be charged for such service, exclusive of New England-wide problems of reliability and adequacy of electric service. In all other respects, the Motion is denied.

(B) The issue referred to in (A) above is hereby incorporated into the consolidated proceeding in Docket No. E-7533.

By the Commission.

( S E A L )

Gordon M. Grant,  
Secretary.

Certificate in Lieu of Record

[Federal Power Commission filed a Certificate in  
Lieu of Record on August 24, 1970 and a Supple-  
ment thereto on November 2, 1970. As a convenience  
there is reproduced hereafter the Certificate in Lieu  
of Record as supplemented.]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Municipal Light Boards of Reading )  
and Wakefield, Massachusetts, )  
Petitioners, )  
v. ) No. 24450  
Federal Power Commission, )  
Respondent. )

CERTIFICATE OF RECORD IN LIEU OF RECORD

Pursuant to the provisions of Section 313(b) of the Federal Power Act (49 Stat. 860, 16 U.S.C. 825l), the provisions of 28 U.S.C. 2112, and Rule 17, Federal Rules of Appellate Procedure, the Federal Power Commission hereby certifies that the materials listed and described below are (1) the order complained of, issued April 29, 1970, Docket No. E-7400, et al., (2) the complete record upon which such order was entered, and (3) the application for rehearing and other related documents together with the Commission's action thereon:

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<u>Description of Document</u>	<u>Original Pagination</u>	<u>Cert. Tr. Pagination</u>
<u>Transcript of Prehearing conference, Municipal Light Boards of Reading and Wakefield, Mass. v. Boston Edison Co., et al., Docket No. E-7400, et al., held May 19, 1970</u>	Page 1 - 128	1 - 128
<u>Municipal Light Boards of the Towns of Reading and Wakefield, Application and Complaint, E-7400, received March 13, 1968</u>	Page 1 - 6 Page 6 - 30 Verification Exh. A, Sheet 1 of 3 Exh. B Exh. C, Page 1 - 3 Certificate of Service	129 135 160 161 164 165 168
<u>FPC letters dated 3/14/68 enclosing copies of application and complaint for answer within 30 days</u>	Letter to Boston Edison Letter to Mass. Dept of Public Utilities	169 170
<u>Boston Edison Co. Affidavit and Memorandum in Opposition to Com- plainants' Application, received March 25, 1968</u>	Cover Page 1 - 27 Affidavit Cert. of Service Exh. A Exh. B, Sheet 1 Exh. C, Page 1 Exh. D - E Exh. F, page 1	171 172 199 200 201 202 204 206 208
<u>Boston Edison Company Answer, received 6/3/68</u>	Page 1 - 28 Verification Cert. of Service	213 241 242
<u>Boston Edison Company letter to FPC submitting notice of termination of agreement between Boston Edison and Boston Gas Co., received 2/28/69</u>	Letter, page 1 - 3 Exhibit A - B Termination notice to Boston Gas, dtd. 3/1/68 Wholesale Electric Utility Rate M M.D.P.U. No. 147 Notice of Termination	243 246 248 249 250
<u>Boston Edison Co. letter to FPC submitting additional information to filing last above, received May 2, 1969</u>	Page 1	251

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<u>Description of Document</u>	<u>Original Pagination</u>	<u>Cert. Tr. Pagination</u>
Boston Gas Co. Protest and Petition, E-7485, received 5/14/69	Cover Page 1 - 10 Verification Cert. of Service	253 254 264 265
Norwood Municipal Light Department Complaint, E-7517, received 12/23/69	Page 1 - 10 Exh. A Exh. B, page 1 of 2 Exh. C, page 1 of 2	266 276 277 279
FPC letter dated 12/31/69 to Boston Edison Co. enclosing copy of complaint filed last above for answer	-	281
Boston Edison Company letter submitting rate schedule, General Service for Resale, E-1, E-7533, received 1/29/70	Letter, page 1 Rate Schedule, Original Sheet No. 1-10 Original Sheet No. 14-17 Proposed Contract, Page 1-19	282 <u>*/</u> 286 296 300 -318
	Statement of Cost of Service- 1968, RE: General Service for Resale, Title page Index, page 1 Statement A, page 1 of 3 Statement B - C Statement D, page 1 of 2 Statement E - F Statement F-1 - F-3 Statement G, G-1 - G-3 Statement H, page 1 of 3 Statement I, J, J-1, K Statement L, sheet 1 of 13 Statement M, sheet 1 of 26 Rate M Cost Study, page 1 Statement N, Table 1 - 2 Statement O Reservation Attestation	743 744 746 749 751 753 755 758 762 765 769 782 808 823 825 826 827

\*/ Corrects the pagination of pages 282 through 318, and adds pages 743 through 842.

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By the Commission.



IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24450

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Municipal Light Boards of  
Reading and Wakefield, Massachusetts,

Petitioners,

v.

Federal Power Commission,

Respondent.

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ON PETITION FOR REVIEW OF AN ORDER OF  
THE FEDERAL POWER COMMISSION

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BRIEF FOR PETITIONERS

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United States Court of Appeals  
for the District of Columbia Circuit

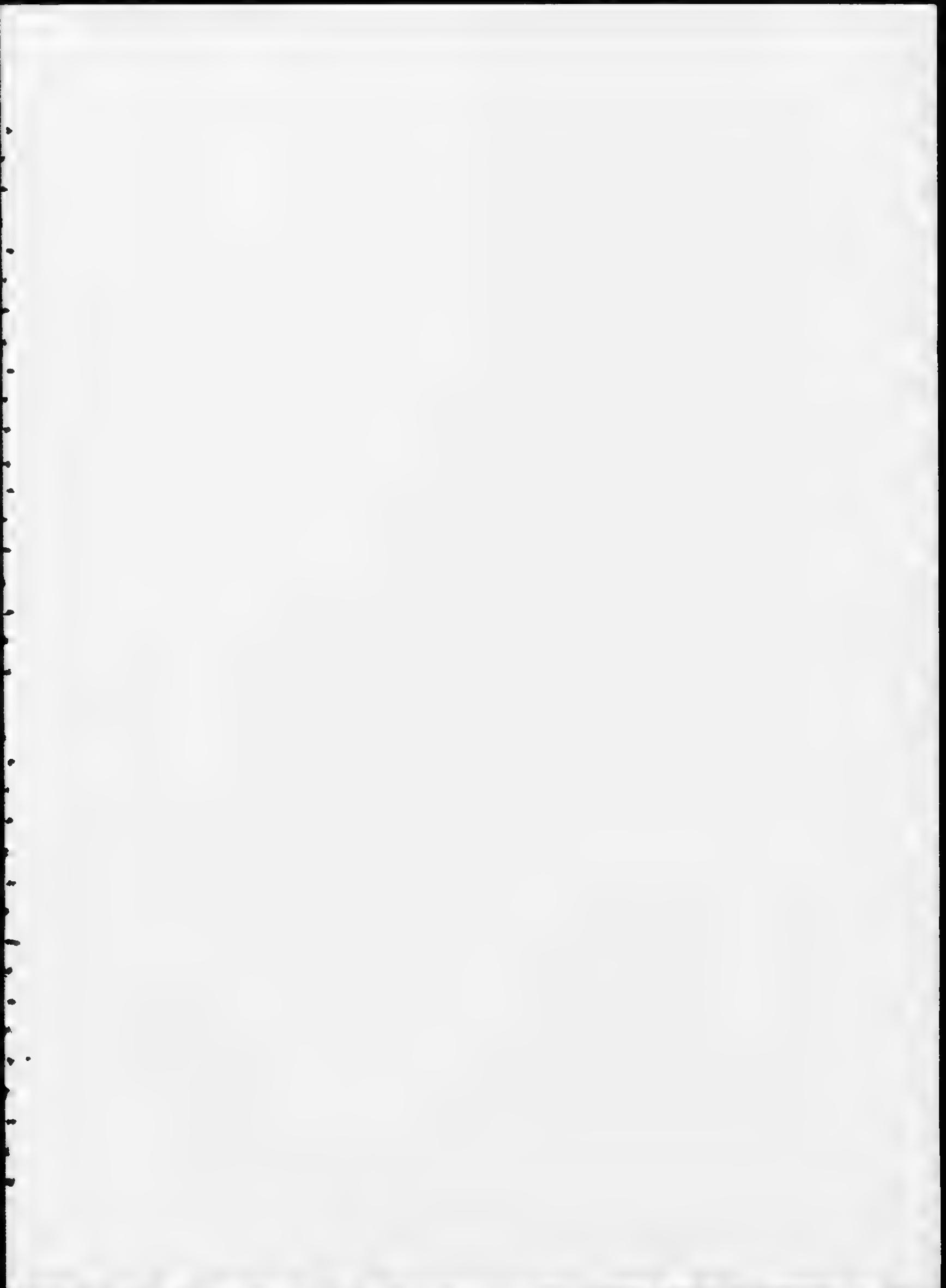
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FED

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September 2, 1970



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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,450

---

Municipal Light Boards of  
Reading and Wakefield, Massachusetts,

Petitioners,

v.

Federal Power Commission,

Respondent.

---

ON PETITION FOR REVIEW OF AN ORDER OF  
THE FEDERAL POWER COMMISSION

---

BRIEF FOR PETITIONERS

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QUESTIONS PRESENTED

The regulations under the Federal Power Act detail the requirements -- including compliance with accounting procedures -- which must be met before a rate increase will be accepted for filing. Where a rate schedule of questionable validity, or one which fails to

comply with the governing regulations, is filed, the Commission is to reject that filing. Moreover, as to any increased rate filing the Commission has the authority to suspend the effectiveness of any rate increase accepted for filing for five months and it has been the Commission's consistent practice to utilize the full reach of that authority as a matter of course whenever there is application for an increase of any significance in the absence of special circumstances.

The Boston Edison Company filed with the Commission a proposal to increase the rates to its distributor customers by approximately 20% and to restrict the right of such customers to resell or to contract for other sources of supply while at the same time warning that it would be unable to assure adequate service. Moreover, the filing, in addition to containing other infirmities, concededly failed to comply with the accounting requirements of the governing regulations.

Although the Commission found that the proposed increase "may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful under the Federal Power Act", and agreed that a serious question as to adequacy of service had been raised, it nevertheless refused to reject the filing, instead it accepted it as of an earlier date than is permitted under its Rules and, without findings,

justification or explanation, suspended the increase of more than \$2.7 million for only one day.

The questions presented are:

- (1) Whether, in the circumstances of this case the Commission erred in failing to reject the rate filing tendered by Boston Edison;
- (2) Whether the Commission erred in suspending the Edison rate filing for only one day, in the absence of any finding or showing of special circumstances justifying a departure from the Commission's consistent practice; and
- (3) Whether the Commission erred in permitting the rate filing to become effective in contravention of the sixty-day notice requirement specified in the Commission's regulations.  
1 /

#### REFERENCES TO RULINGS

In this proceeding Petitioners, pursuant to Section 313(b) of the Federal Power Act, 16 U.S.C. 825 (b), seek review of orders of the Federal Power Commission, dated April 29, May 26 and June 26, 1970, accepting for filing a challenged rate increase and suspending it for only one day. The challenged Orders of the Commission are set forth in Supplement A.

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1 / This proceeding has not previously come before this Court.

STATEMENT OF THE CASE

Petitioners, the Municipal Light Boards of the Towns of Reading and Wakefield, Massachusetts ("Towns"), own and operate municipal electric distribution systems and purchase their total power supply from the Boston Edison Company ("Edison").

Wakefield serves all of the electric needs within its community; Reading, in addition to servicing local needs, provides service in three nearby towns and competes with Edison for desirable large customers. The cost to the Towns of purchasing power at wholesale from Edison accounts for approximately 55% of their total electric revenues. According to statistics published by the Federal Power Commission ("Commission"), the wholesale rates paid by the Towns to Edison -- prior to the rate increase involved -- were already more than double the national average paid by municipal purchasers generally.

Edison is an electric utility company serving a compact area in and about the City of Boston, Massachusetts and located wholly within Massachusetts. It is a "public utility" under Part II of the Act by virtue of its many interconnections with neighboring utilities through which it purchases and sells electric energy across New England state boundaries.

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2 / FPC Statistics of Publicly Owned Electric Utilities in the United States 1968, pp. xii-xiii.

The largest part of its sales are to retail customers and subject to the regulatory jurisdiction of the Massachusetts Department of Public Utilities. Some 8.2% (\$15.8 million) of its revenues are from sales for resale in interstate commerce under the Federal Power Commission's Part II regulation to 7 utilities (2 public utilities and 5 municipal utilities) distributing electricity at retail in areas surrounded by or adjoining areas Edison serves at retail. The rates, terms and conditions of these 7 sales are in issue in this proceeding.

1. Edison's Rate Increase Tender: January 29, 1970

On January 29, 1970, Edison tendered a rate increase of approximately 20% or some \$2.7 million for filing with the Commission. Under that filing the rates to both of the Towns will be increased approximately \$750,000 per year. The tender also proposed changes in the terms and conditions of purchase (R. 282-318).

Under the prior rate schedule, the purchased power could be  
3 /  
resold to other utilities. The tendered rate schedule would prohibit resale to other utilities, without Edison's consent, and if consent were given, the rates and charges in the tendered schedule would not apply,

---

3 / "Wholesale Electric Utility Rate M", FPC Electric Rate Schedule Nos. 11, 12, 13, 14, 15, 16, 17: "Available for electricity supplied by the Company in bulk to an electric company or a municipal lighting plant for redistribution to consumers located outside of the cities and towns, or portions thereof, within which the Company distributes and sells electricity."

and Edison would advise "the customer . . . of the applicable rate  
4 /  
schedule or its best estimate of charges for such service."

---

4 / "C. Availability of General Service for Resale

Except as may be otherwise agreed, General Service for Resale is only available to electric utilities and municipal electric departments for the purchase of electricity supplied in bulk by the Company for the Customer's own use and for resale by the Customer to ultimate consumers located within the area served by the Customer. A Customer wishing to sell electricity in bulk for resale shall give the Company notice in writing of its intention so to do and shall furnish the Company such information relative to the proposed sale for resale as the Company may require; whereupon the Company shall, as soon as is practicable after receipt of such notice, advise the Customer of its ability to supply such electricity and of the applicable rate schedule or its best estimate of charges for such service." (R. 310-311)

Under the prior schedule, the customer could terminate service  
5 /  
by giving 12 months' advance notice; the tendered schedule would require  
6 /  
5 years' advance notice.

The prior schedule contained no restrictions on the purchase of power by Edison's customer from other utilities, nor on the generation of power by Edison's customer. In other words, Edison's customer was not required to purchase its full requirements but could purchase its partial requirements from Edison and the balance could be purchased from other sources and/or provided by self-generation. The tendered schedule would require Edison's customer to purchase its full requirements from Edison, and indicates that Edison might agree: (i) that the customer could install generation for 20% of its load upon 2 years' notice or (ii) that the customer

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5 / "Term of Contract as specified in agreement for electric service. Customer may terminate service on or after the expiration of such specified term of service by giving at least twelve months' notice in writing." ("Wholesale Electric Utility Rate M", FPC Electric Rate Schedule Nos. 11, 12, 13, 14, 15, 16, 17).

6 / "2. Term of Service - Unless otherwise duly ordered by any regulatory agency having jurisdiction, service under this contract shall commence on \_\_\_\_\_, 19 \_\_\_\_ and either party may terminate this contract by giving five (5) years' notice in writing, or other notice reasonable in the circumstances as the parties may agree." (R. 308).

could generate in excess of 20% upon 5 years' notice, or (iii) that the customer could purchase power from another source upon 5 years' notice.

7 /

**7 / "A. Obligations of the Parties**

The Customer agrees to take and pay for and the Company agrees to supply all of the Customer's requirements of electricity (except as provided in paragraph B hereof and subject to the provisions of paragraph C of Exhibit A) under this contract as the same may be in effect from time to time subject to action of the regulatory commission having jurisdiction. Either party may terminate such service by giving five (5) years' notice in writing, or other notice reasonable in the circumstances as the Company and the Customer may agree. Prior to the first day of September of each year, the Customer shall furnish to the Company a forecast of its summer and winter peak loads for each of the following five (5) years.

**"B. Peaking Unit Exception**

The Customer may continue to receive service under this contract for all requirements service if, after reasonable notice to the Company (no less than two (2) years), it installs peaking generating capacity on its system of no more than 20% of its annual peak load in the year of installation.

**"C. Availability of Partial Requirements Service**

Upon reasonable notice by the Customer of its intention to install its own generating equipment (other than as specified in paragraph B hereof) or to purchase electricity from other sources, the Company will make available to the Customer as soon as practicable a rate for General Service for Resale - Partial Requirements Service, or its best estimate of charges for such service. Said notice shall specify the amount of capacity to be purchased or installed and the planned date of the purchase or of initial operation of the equipment to be installed. Unless otherwise agreed, reasonable notice shall be understood to mean five (5) years if the Customer plans to purchase capacity or install capacity in excess of that specified in B above.

**"D. Costs Incurred in Reliance on Notice**

In the event that the Customer, having given the Company the notice called for in paragraphs B or C above, continues after the date specified in the notice to call upon the Company for the capacity and energy as to which notice was given, the Company will exert its best efforts to supply such capacity and energy and the Customer shall pay the Company, in addition to the charges under the applicable rate, any extraordinary costs incurred by the Company in making available such capacity and energy. The Customer shall have six (6) months after receipt of the rates or estimate referred to in paragraph C above to withdraw its notice without being liable for any charge for such extraordinary costs." (R. 299-300).

The tendered schedule contained major revisions in rate design.

Under the prior schedule, the same rates and charges applied whether Edison delivered at high voltage (115 kV) or low voltage (13.8 kV). Under the tendered schedule a differential in charges of approximately 14% is established.<sup>8/</sup> In the case of Reading, for example, Edison estimates that the annual bill for 13.8 kV delivery would be reduced by approximately \$460,000 by taking service at 115 kV (R. 473). The tendered rate schedule introduced a special charge to cover the period of change-over from 13.8 kV to 115 kV (R. 297).

Under the prior schedule, all increased quantities purchased in excess of 1965 purchases were priced at a special low rate. This has been eliminated.

Under the prior schedule, the demand charge was determined by the kilowatt reading (kW); under the tendered rate, it is determined by the kilovolt-ampere reading (kVA). The effect is to introduce a new type of power factor adjustment which has a significant effect on the price of purchased electricity. The tendered schedule also substitutes a new fuel adjustment charge.

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8 / "Applicable Rates

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"(2) 14 and 24 kV Service. Basic Rate, plus additional charge of \$0.70 per kVA of maximum 60-minute kVA demand in the current or preceding eleven months." (R. 297)

2. Towns' Motion to Reject Tender: February 24, 1970

On February 24, 1970, the Towns filed a Motion to Reject Submission of Rate Change. The Motion points out the following basic positions:

- (i) That the 20% increase in the wholesale rate raises it to a level near or above the rate level of Edison's industrial retail rate, which was left unchanged, thereby placing the Towns "in a difficult competitive position" to attract industrial loads so that an immediate irreparable loss can be expected (R. 351-2).
- (ii) That there were at least seven additional infirmities, including the undisputed fact that Edison had failed to maintain its depreciation accounts in conformity with the Commission's prescribed accounting procedures (R. 355-375). Instead of segregating its depreciation accounts into functional classifications as required by the Commission's Rules (See 18 CFR § 35.13(b)(iv) Statements E and I), Edison has submitted consolidated figures. As a result, the Towns stated that meaningful analysis of Edison's financial submission (the predicate of its rate filing) was thwarted (R. 362-9). Thus, the filing should be rejected for non-compliance with the Commission Regulations under the Federal Power Act (Sections 35.2, 35.5) because it "patently fails to substantially comply with the applicable requirements...."

(iii) That the restrictions on customer resale of Edison power, and on self-generating and outside power purchase (see pages 5 to 8, supra) were on their face contrary to antitrust law and policy and should be stricken before any change in rates and charges is accepted for filing (R. 375-384). The Motion points out as to these restrictions (R. 375):

"The effect would be to hold the Company's customers captive, and prevent their obtaining lower-cost alternate power, while Edison seeks to force-feed a drastic 20% rate increase free of competitive restraints."

The Motion further points out that the restrictions could prevent Edison's customers from participating in purchases from (i) the Vermont and Maine Yankee nuclear generator projects, (ii) the importation of power from New Brunswick, Canada now under contract by the New England industry, and (iii) surplus capacity of the Northfield Mountain pumped storage licensed project. Moreover, it hampers Edison customers from participating in the evolving New England Power Pool (Interim NEPEX Power Exchange Agreement, filed with the Federal Power Commission May 20, 1970). It would also hamper the development of the Town of Braintree's proposed 400 mW generator which is to be tied into Edison's system and to be available for purchase by wholesale customers of Edison.

3. Towns' Letter of Comment: February 26, 1970

On February 26, 1970, the Towns filed their letter of comment requesting that the Commission suspend the proposed rate schedule changes for the full 5-month period provided under Section 205(e) of the Act in accordance with the Commission's usual procedure, in the event the Commission reject the tendered schedule (R. 409 - 416). The letter pointed out that (R. 409-410):

"The Commission's latest statistics show Edison to have earned an 8.10 % rate of return in 1968, up from a corresponding 1967 level of 7.93%"

The 8.10% return for 1968 was pertinent because Edison had used 1968 data in support of its filing, and the letter states that this return "is higher by far than the Commission has ever allowed to an electric utility and is obviously excessive" (R. 412). The letter also asked suspension for each of the reasons stated in the Towns Motion to Reject (pages 10 - 11 , supra). The letter stressed the incompleteness of the tendered rates and charges in that no rate is expressed for partial requirements purchase although the prior rate was available for either partial or full requirements purchases (R. 412). The letter notes the discrimination between the tendered rates and charges and Edison industrial retail rate.

The letter notes that a novel special facilities charge has been added for 115 kV delivery, as well as a special interim surcharge

for a customer like Reading which is in the process of reconstructing its system at considerable capital expense in order to receive power at the high voltage of 115 kV (R. 414). It further notes that the tendered schedule would change the standard for Edison's liability so that, absent "willful default", Edison would bear no responsibility for deficient or unreliable service (R. 414). Other deficiencies were also noted (R. 415). The letter also requested that the restrictive terms and conditions (pages 5 to 8 , supra) be stricken as unreasonable and unlawful on their face (R. 416).

4. Edison's Answer: March 6, 1970

Edison, on March 6, 1970 filed it's "Answer of Boston Edison Company in Opposition to Motion to Reject" (R. 424-442) generally and specifically opposing various matters raised by the Towns.

5. Towns' Motion to Reject on Service Grounds: April 22, 1970

On April 22, 1970, the Towns by motion again urged that the filing be rejected, this motion being predicated on Edison's failure to hold out a public utility grade of service (R. 545-575 ). The Towns pointed to: (1) the fact that voltage reductions have become frequent and substantial on a system-wide basis and appeared to be on the increase (R. 549-550); (2) Edison's own letter of warning, to the Towns and 36 other communities that it does not expect to be able to provide reliable, uninterrupted service in the near future and is restricting the connection

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of new loads (R. 251-253) ; and (3) Edison's failure to proceed with the construction of its portion of 115 kV transmission facilities needed to assure that Reading will be able to serve its winter 1970-71 requirements (R. 253-261).

6. Commission's 1-day Suspension Order: April 29, 1970

On April 29, 1970 the Commission issued its order denying the Town's motions to reject, suspending the rate change for one-day; and allowing it to become effective subject to investigation and refund (R. 580-593).

The order briefly summarized some of the objections by the Towns and other Edison customers (R. 582), but does not discuss in any way why these objections should not be accepted for purposes of either rejecting the tender or suspending the rate for 5 months. The only pertinent findings and conclusions are (R. 587):

"(1) Good cause exists to deny the motion filed by Reading and Wakefield on February 24, 1970, requesting rejection of Edison's submittal of Rate S-1 and to accept for filing Rate S-1.

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9/ "The letter states that Reading and Wakefield are on a list of 36 communities as to which 'service interruptions in parts of and, in some cases all of the . . . communities can be expected . . . .' The letter points out that ' . . . the Company, where pertinent, plans to refuse to connect new electrical loads, and may find it necessary to ask large industrial customers to limit or curtail their operations . . . .' The letter urges the communities ' . . . to review your local procedures particularly with respect to essential municipal services.' " (R. 251-252).

"(2) The proposed increased rates and charges contained in Rate S-1 have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful under the Federal Power Act.

"(3) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Section 205, 206, 301, 307, 308 and 309 thereof, that the Commission enter upon a hearing concerning the lawfulness of the rates and charges and other provisions contained in Edison's proposed Rate S-1 and that Rate S-1 be suspended and the use thereof deferred as hereinafter ordered."

Commissioner Carver dissented from the Commission's refusal to suspend for more than 1 day, as follows (R. 592-3):

"Clearly, Boston Edison's rate increase filing in these dockets requires suspension for investigation, hearing and decision on the evidence. I must, however, voice objection to the discriminatory treatment reflected in the unexplained determination that the annual rate increase exceeding \$2,733,000 be suspended for one day only.

"These proceedings originate in a unilateral filing of a new wholesale rate schedule which will result in an average increase of more than 20% to six of Boston Edison's seven customers. Five of these are municipally operated distribution systems. In no recent case of similar magnitude has this Commission failed to impose the full five month suspension period permitted by Section 205(e) of the Federal Power Act. In Duke Power Co., Docket No. E-7513, the order issued November 20, 1969, suspended a 5.54% increase approximating \$1,650,000 annually for five months and similar action was taken in Union Electric Co., Docket No. E-7525, on a proposed 10.7% increase involving \$819,000 annually. The sole instance of a one-day suspension in the past year involves Boston Edison Co., Docket No. E-7485, which is being consolidated herein. There, however, a minor adjustment in sale terms involved approximately \$58,000 per year.

'The reasons for a longer suspension period appear more compelling here than in the situations cited above. A rate increase which is larger in dollar amount and in percentage is being visited upon fewer affected customers. The impact of an unanticipated cost increase will fall most heavily on municipal distribution systems. By the very nature of their operations, such entities maintain narrower financial reserves and have less flexibility to change retail rate structures on short notice.

"Apart from Commission practice, a conceivable case for short-term suspension might exist if the filed rates merely related rate of return to increase production and delivery costs. That is not the case here; Boston Edison's proposed Rate S-1 incorporates fundamental changes in rate design and conditions of service. It is by no means apparent that they have such prima facie validity as to presage ultimate approval. Any 'irretrievable loss' that might result from suspension for five months should be put in realistic perspective. Over the maximum suspension period, the increase sought by Boston Edison represents about six-tenths of one per cent of its total annual revenues from the sale of electricity. By contrast, the interim cost increase to its five municipal customers would exceed 5.5% of their total annual electric utility operating income. Any risk of uncertainty would thus work much harsher consequences upon the customer than the rate increase applicant.

"The public interest is ill served by an action of this Commission which is so discriminatory on its face and so unsound in its potential impact on the affected Massachusetts consumers."

7. Edison's Answer to Towns' Motion to Reject on Service Grounds: May 4, 1970

On May 4, 1970 Edison replied to the Towns notice concerning the quality of Edison's service (R. 597-641). This agrees that there have been many voltage reductions but considers this part of a generalized program for dealing with regional capacity limitations, while

Boston Edison is said to have adequate generating reserves (R. 599-607). It explains Edison's warning letter concerning outages as based upon its difficulty in obtaining road crossings. Edison stresses a letter of April 6, 1970 it received from the Commission's Chief of the Bureau of Power noting that Commission is ". . . vitally interested . . . in the adequacy and reliability of electric service and . . . [is] concerned about any problems which may jeopardize the power supply" but nonetheless stating that the "Commission has no particular jurisdiction in this case." (R. 607).

The Commission had already ruled in part on this motion, denying the request to reject filing on service grounds. Later, on June 26, 1970, the Commission accepted the service question as an issue in the case (p.20-21 infra).

#### 8. Motions for interim suspension

On May 8, 1970, the Towns, together with the Towns of Concord, Norwood and Wellesley, Massachusetts, filed a Joint Motion for Emergency Amendment of Order. Pointing out that the unprecedented one-day suspension created a financial emergency for the municipal customers of Edison, the municipalities requested that the effective date of the increase be postponed until at least July 1, 1970, in order to give the municipalities time, under local law, to pass on the increases to their customers with properly redesigned retail rates.

In this connection the municipalities pointed out that the cost of power accounted for approximately 55% of the total electric revenues collected by them, and hence the Commission's failure to suspend the 20% increase for the statutory period placed the municipalities in a particularly precarious revenue-deficient position. In contrast the municipalities further noted Commission statistics showing that Edison is in a favorable earnings position, with an overall rate of <sup>10/</sup> return of 8.1% in 1968 and 8.5% in 1969, with rising earnings in 1970.

Edison replied on May 13, 1970 opposing the request for a short interim suspension on the grounds that the Towns would not suffer the financial injury claimed even if they operated at a deficit for a month or two (R. 661-666); and that the cited 8.5% actual rate of return for Edison in 1969 did not allow for normalization of income tax savings and some other items, although Edison did not disclose its rate of return under its theory (R. 666-668).

Boston Gas Company, another wholesale customer of Edison, intervened on May 12, 1970 and moved for an "Emergency Amendment"

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<sup>10/</sup> Edison's most recent Quarterly Dividend Report states as follows: "The Accompanying figures show Company earnings per common share at \$1.79 for the first six months and \$3.49 for the twelve-month period ended June 30, 1970. These earnings compare with \$1.40 and \$2.80 for the same periods ended June 30, 1969. Included in the 1969 figures are 17 cents of nonrecurring costs from the adverse impact of two storms and a prolonged loss of generating capacity.

For the six-month period Edison territory kilowatt-hour sales are up 8.9 per cent and electric revenues 7.5 per cent over the previous year's totals." (Boston Edison Co., Quarterly Dividend Report, August, 1970)

of the Order, relying on Section 35.13(b)(4)(i) of the Commission's Rules, 18 C.F.R. § 35.13 (b)(4)(i), which requires that a utility complete its documentary submission "60 days prior to the date that such changed rate is proposed to become effective." In its Order of April 29 the Commission had found that Edison had not completed its filing until March 30, 1970. Accordingly, under the governing regulation that filing could not be made effective until May 31 at the earliest - and certainly not on May 1 as the Commission had undertaken to permit.

By order of May 26, the Commission denied the movants joint request (R. 709-712). Noting that Edison would be required to refund any portion of the rates which eventually are found to have been illegally exacted, the Commission concluded that this afforded the municipalities adequate protection. On the other hand, the Commission, without discussing the question of the claimed 8.5% rate of return, ruled that ". . . any relaxation of our one day suspension period will result in an irretrievable loss to Edison." (R. 710). As to its failure to abide by its own regulations, the Commission construed an Edison request that the rates be made effective within 30 days as an implicit request for waiver of the applicable 60 day notice requirement. "The legal effect of our order," said the Commission, "was to waive the notice provision . . ." In his dissent, Commissioner Carver makes

it clear that the Commission never contemplated the waiver of its regulations (R. 712):

"My dissent to the original order in this proceeding is unaffected by the attempted justification set forth in the current order. The Commission persists in its discriminatory treatment of the complainants; I must continue to object.

"The present order adds a new objectionable element to the case. In answer to the Boston Gas allegation that the order issued April 29, 1970 violated the Commission's own Rules of Practice, the present order proceeds on a theory that there had been a waiver of the regulations in question. It is clear beyond doubt that the Commission could have waived the time requirements involved, but I think the plain fact is that it did not. Waiver of a regulation having the effect of law is not a matter to be taken lightly: to me, it requires a conscious, affirmative and specific intent and action thereon. The fact is that Section 35.13(b)(4)(i) of the Regulations played no part in the consideration of this matter. A waiver may not be constructed out of an action which merely ignores the regulation."

#### 9. Application for Rehearing

The Towns filed an application for Rehearing of the Commission's April 29 order repeating, with specific allegations of illegality including the antitrust violations, the basis for their motion to reject the increased rate submission (R. 713-733). On June 26, 1970, the Commission, treating its action as non-reviewable, characterized the Rehearing Application as one seeking Reconsideration and denied it (R. 735-8).

On the same date, impressed by the showing that Edison was

not rendering an adequate grade of utility service, the Commission in a separate order found that (R. 741):

"Good cause exists for granting the Municipalities' request for an investigation into whether the quality and adequacy of electric service rendered by Edison may effect the lawful rates to be charged for such service . . . ."

#### STATUTES AND REGULATIONS INVOLVED

The pertinent parts of the Federal Power Act, Part II, 16 U.S.C. 824, et seq., and of the Regulations of the Federal Power Commission promulgated under that Act, 18 CFR Part 35, are set forth in the Supplement B.

#### SUMMARY OF ARGUMENT

Confronted with a rate filing by their sole supplier, the Boston Edison Company, which will increase their wholesale cost of electricity some 20% and restrict their ability to obtain power from alternative sources of supply and to compete with Edison for large load customers, the Towns challenged the rate filing before the Federal Power Commission. They contended that the filing should be rejected altogether because of its restrictive provisions which violate national antitrust policy, its failure to comply with the Commission's accounting and billing requirements and Edison's failure to render adequate service to its municipal customers. Alternatively, the Towns urged that at a

minimum the Commission should exercise its authority, under Section 205(e) of the Federal Power Act to suspend the effectiveness of the rate provisions for five months. Suspension for that period would have permitted the Towns to negotiate freely for an equitable share of the large, lower cost bulk power projects soon to be in operation in New England. In addition it would have carried all parties past the crucial summer months during which period Edison's service would be inadequate and unreliable.

The Commission agreed with the Towns that the proposed filing "may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful under the Federal Power Act." It also agreed that the Towns had raised substantial questions as to the adequacy of the service being rendered by Edison. Nevertheless, in conclusory terms, and without responding to the infirmities raised by the Towns, the Commission refused to reject the filing. Further, in violation of its consistent administrative practice to suspend any significant rate increase for the full five month period, it refused a request to suspend this more than \$2.7 million annual increase for that period and without explanation suspended it instead but one day. Finally, in disregard of its own regulation which requires 60 days notice prior to the effective date of a rate increase, the Commission, without enunciating any justification for the circumvention of its rule,

permitting the filing to become effective on 30 days' notice.

As we show, under Section 309 of the Act, the Commission was legally obliged to reject the Edison rate filing. As we further show, even if the acceptance of that filing was appropriate, it was an abuse of discretion for the Commission to deny the Towns' request for a five month suspension and to permit the filing to become effective in plain violation of the notice rule.

At every point the Commission is silent as to its reasons for action taken and the basis upon which substantive positions were rejected. Thus there emerges arbitrary and capricious action which renders unlawful the Commission's failure to reject the filing, its refusal to suspend for more than one day, and the claim that it silently waived its regulations.

#### ARGUMENT

##### I

###### THE COMMISSION COMMITTED REVERSIBLE ERROR IN REFUSING TO REJECT THE EDISON RATE FILING

###### A. The Commission is Obligated to Reject Rate Filings Which on Their Face are Inconsistent with the Public Interest.

Section 205 of the Federal Power Act provides for the filing of rate increases by public utilities subject to the Commission's jurisdiction under the Act. To be sure, the Act authorizes the Commission to suspend the effectiveness of such rate increases for

five months and thereafter to permit the increased rates (if their lawfulness has not yet been finally determined) to go into effect subject to refund. However, recognizing that the refund procedure provides only limited and inadequate protection to the captive distribution customers and their consumers, the courts have made clear that the Commission is empowered to "screen" rate increases for any impropriety and to reject the filing where the filing on its face indicates that its acceptance would be inconsistent with the public interest.

At the outset it should be noted that the Commission has never taken the position that it lacks the authority to reject a rate filing which on its face violates basic public policy. Indeed, its repeated -- judicially approved -- actions in this regard preclude any such assertion at this late date.

In addition to the rate sections of the Act, Section 309 authorizes the Commission

"to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this Act."

This provision is identical to Section 16 of the Natural Gas Act and the Commission's authority under the latter to reject rate filing was underscored by the Supreme Court in United Gas Pipeline Company v. Mobile Gas Service Corp., 350 U. S. 332 (1956). There a natural

gas company, which had contracted to supply a distribution company, filed with the Commission a rate schedule higher than that specified in the contract. The distribution company petitioned the Commission to reject the filing and the Commission declined to so do. The Supreme Court, as had the Third Circuit (215 F. 2d 883), held that the Commission committed reversible error. It could not, the Court found, permit the unilateral filing of a rate schedule that was inconsistent with the parties existing contractual arrangements. As the Court stated (350 U.S. at 347):

"There can be no doubt of the authority of the Commission to reject the unauthorized filing under its general powers to issue orders 'necessary or appropriate to carry out the provisions of this Act,' § 16, and its failure to do so and its order 'permitting' the new rates to become effective were in error." 11/

On the same date the Court decided an analogous case under the Federal Power Act, with the same result, noting, "As the parties concede, the provisions of the Federal Power Act relevant to this [rate] question are in all material respects substantially identical to the equivalent provisions of the Natural Gas Act."

FPC v. Sierra Pacific Power Co., 350 U. S. 348, 353 (1956). The Court emphasized "that the purpose of the power given the Commission [by its rate authority] is the protection of the public interest,

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11/ There can be no doubt, in view of Mobile, of the reviewability of the Commission's refusal to reject a rate filing.

as distinguished from the private interests of the utilities . . . ." Id. at 355.

Those decisions are by no means isolated expressions of the Commission's authority -- indeed obligation -- to reject rate filings. The Commission has been held to have the authority to preclude any rate increase filing while a previous increase is still under suspension, Amerada Petroleum Corp. v. FPC, 293 F.2d 572 (10th Cir. 1961), cert. denied, 368 U. S. 976 (1962), or while the initial rate for a sale was being determined in a certificate proceeding, FPC v. Hunt, et al., 376 U. S. 515 (1964). Likewise it has the authority to reject a filing which contains other than "permissible" price-changing provisions, FPC v. Texaco, Inc., 377 U. S. 33 (1964), or objectionable escalation provisions, Superior Oil Co. v. FPC, 322 F.2d 601(9th Cir. 1963), cert. denied 377 U. S. 922 (1964), and to forbid the filing of rate increases after the just and reasonable area rates have been set, Permian Basin Area Rate Cases, 390 U. S. 747 (1968). As Justice Harlan stated in Permian (390 U. S. at 779):

" . . . This court has already declined to find in § 4 (d) or § 4 (e) [of the National Gas Act] an 'invincible right to raise prices subject only to a six-months delay and refund liability.' United Gas Imp. Co. v. Callery Properties, 382 U. S. 223, 232, 86 S. Ct. 360, 366, 15 L. Ed. 2d 284 (opinion concurring in part and dissenting in part). Section 4(d) merely requires notice to the Commission

as a condition of any modification of existing rates; it provides that a 'change can be made' "[citing United Gas Pipeline Co. v. Mobile Gas Service Corp., supra, emphasis in original].<sup>12/</sup>

B. The Commission Was Obligated to Reject the Edison Rate Filing In View of Its Anticompetitive Provisions, its Failure to Comply with Governing Regulations, and Edison's Failure to Render a Utility Grade of Service.

It is not without significance that in Amerada, Hunt, Texaco, Superior and Permian, there was no question but that the tendered filings were perfectly legal. Their rejection by the Commission was predicated solely on public policy determinations. It would follow a fortiori that where a filing on its face not only violates public policy (including particularly the national antitrust policy) but fails to comply with the governing regulations, its rejection is mandated. As we show, the Edison filing suffers from each of those basic and most serious infirmities.

1. The Edison Filing Violates National Antitrust Policy

a. The Responsibility of the Commission

It is now well established that the Commission has the affirmative obligation to scrutinize matters which come before it to determine their consistency with the national policy in favor of free competition.

See California v. FPC, 369 U. S. 482 (1962); Northern Natural Gas Co.

<sup>12/</sup>See also American Commercial Lines, Inc., v. Louisville & Nashville R. Co., 392 U. S. 571, 578, 591-593 (1968), United States v. Southwestern Cable Company, 392 U. S. 157, 180-181 (1968) and United States v. Storer Broadcasting Company, 351 U. S. 192, 202-203 (1956), where the Court gave a similarly broad construction to analogous provisions in the Interstate Commerce and Federal Communications Acts.

v. FPC, 130 U. S. App. D. C. 220, 399 F.2d (1968); see also SEC v.

New England Electric System, 384 U. S. 176 (1966).

This principle has been emphasized in a recent series of opinions of this Court dealing specifically with the anticompetitive restrictions that are being imposed against the Massachusetts Municipalities, including the Towns here, by the privately owned segment of the electric power industry. See Municipal Electric Ass'n of Massachusetts v. SEC, 134 U. S. App. D. C. 145, 413 F.2d 1052 (1969), and \_\_\_\_ U.S. App. D. C. \_\_\_\_, 419 F. 2d 757 (1969); Municipal Electric Ass'n of Massachusetts v. FPC, 134 U. S. App. D. C. 310, 414 F.2d 1206 (1969); and Cities of Statesville, et al., v. AEC, \_\_\_\_ U. S. App. D.C. \_\_\_\_, \_\_\_\_ F.2d \_\_\_\_, Nos. 21,706 and 21,844, December 5, 1969.

In those decisions this Court admonished the Federal Power Commission -- and its sister regulatory agencies -- of its responsibility to maintain a competitive climate in New England between the privately and publicly owned industry segments.

Cities of Statesville is of particular significance for although the Court there declined to set aside the Atomic Energy Commission's refusal to consider antitrust questions in issuing a construction permit for a nuclear facility, it made clear that the Atomic Energy Commission could not avoid facing up to anticompetitive questions (Slip Opinion, p. 23, emphasis added):

"In the reasoning of each of the petitioners in these cases we see a basic position constantly appearing in several facets of the argument. That position is that every agency charged with a licensing power must, when acting under a 'public interest' standard, apply antitrust concepts to everything it does which might involve anticompetitive results. Such reasoning is not without support in cases of this court. Last year, in Northern Natural Gas Co. v. FPC, 130 U. S. App. D. C. 220, 399 F.2d 953 (1968), we took the opportunity to develop our thinking on the relationship of the antitrust laws to agency regulation. There we declared our belief 'that the basic goal of direct governmental regulation through administrative bodies and the goal of indirect governmental regulation in the form of antitrust law is the same - to achieve the most efficient allocation of resources possible.' 399 F. 2d at 959. We further pointed out that while these two goals complement one another, 'the antitrust laws are merely another tool which a regulatory agency employs to a greater or lesser degree to give'understandable content to the broad statutory concept of the 'public interest'!'" Id. at 961. However, what we did not touch upon in that case, and what is unique about the instant situation, is the extreme narrowness of the Commission's jurisdiction in making licensing determinations. Unlike the Federal Power Commission, the Federal Communications Commission, and the many other regulatory agencies, the Atomic Energy Commission is dealing with a subject matter that is not, as yet, open to vast commercial exploitation."<sup>13/</sup>

In discharging its regulatory responsibilities over rates, the Commission is, of course, mandated to protect the "public interest." See Atlantic Refining Co., et al. v. Public Service Commission of New

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<sup>13/</sup> In a concurring statement, Judge Leventhal, joined by Judges Wright and Robinson, said (Slip Opinion, p. 45): "The decisions of the Supreme Court and this Court over a period of at least 25 years have evolved and defined a substantial jurisprudence making clear that the administration of federal regulatory statutes calling for determinations of the public interest establish the authority, and in some instances the duty, of the cognizant agency to take into account what has been aptly called the nation's 'fundamental national economic policy,' namely the principles of the antitrust laws." (footnote omitted)

York, 360 U. S. 378 (1959); FPC v. Tennessee Gas Transmission Co.,  
371 U. S. 145 (1962); and FPC v. Hunt, et al, supra.

In Municipal Electric Ass'n of Massachusetts v. SEC, supra,  
413 F.2d at 1057, this Court detailed the anticompetitive claims of  
the Municipals (including specifically of Wakefield, see 413 F. 2d at  
1058) which were not, in its view insubstantial:

"The assertions of Municipals as to which they seek an evidentiary hearing point to an increasing concentration in Massachusetts and, indeed, in New England, of control over low cost electric power through nuclear generating plants. Municipals are excluded from the opportunity to have access on reasonable terms to this power at its source, where it is available solely to the sponsoring companies. Municipals assert that this is due to an intentional course of conduct designed to increase the control of sponsors over the industry in the area and to foreclose opportunities to Municipals. While the areas respectively served by Municipals and the sponsors do not territorially overlap, and are regulated by local agencies, sponsors or their affiliates compete with Municipals to supply power for new enterprises coming into the areas. Moreover, Municipals charge before the Commission in more or less classical terms that applicants have participated in combinations or conspiracies by which Municipals have been excluded from participation in regional planning of bulk generation and transmission and believe that the present projects emerged from such regional planning activities."

Finally, in Municipal Electric Ass'n of Massachusetts v. FPC, supra, 414 F.2d at 1209-1210, this Court made it very clear "that petitioners' contentions of a planning boycott are [not] insubstantial or irrelevant" and it looked to the Commission for appropriate policing action in the future. It is of particular relevance here that the Court

"note[d] in passing that, apparently partly as a result of another proceeding in this Court, petitioners will be granted partial ownership of another new bulk power resource in New England" (414 F.2d at 1209), referring to its earlier decision in Municipal Electric Ass'n of Massachusetts v. SEC, supra, and the fact that certain municipals now have been offered participation in the Vermont Yankee Nuclear <sup>14/</sup> plant.

That hard-won right to participate is obstructed by the Edison rate filing if it is permitted to remain in effect. Indeed, notwithstanding the plain mandate of this Court that it act in the future to protect the competitive situation in New England in general and Massachusetts in particular, now that the future is here the Commission has once again chosen to bury its head in the sand.

b. The Restrictive Provisions in the Edison Filing Violate National Antitrust Policy

The rate filing submitted by Edison violates national antitrust policy in several significant respects. First, the filing requires five years notice prior to the installation of generating capacity by the customer utility (other than peaking units totalling no more than 20% of annual peak load for which at least two years' notice would be required). It also requires five years' notice before power may be purchased from any third source (see pages 5 to 8, supra).

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14/ Offering letters from Vermont Yankee Nuclear Power Corporation, Maine Yankee Atomic Power Company and their sponsors companies were mailed to every utility in New England, including the Towns and other Edison customers. Offerees have until October 27, 1970 to accept the offers.

The plain effect of these provisions is to make Edison customers captives who, for all practical purposes, will be unable to secure a lower-cost alternative supply for even a portion of their increasing energy needs, and thereby to bar them from availing themselves of any power that may be available to them from one of the giant (lower-cost) plants now under construction in New England.

In short, the five-year notice provision renders illusory the customers' right to equitable participation, a requirement which Edison has undertaken to impose unilaterally and which operates to deny Edison's customers the freedom to seek alternative sources of supply even for their incremental needs in future years.

This restriction is being imposed, and permitted to become effective as a result of the Commission's action here at a particularly crucial time, when the municipal systems of Massachusetts, for the first time, may be able to obtain power to satisfy a portion of their needs from one or more of the large plants now under construction.

As this Court noted in Municipal Electric Ass'n of Massachusetts v. FPC, supra, 414 F.2d at 1207, the Northfield Mountain pump-storage project is "expected to be producing 750 mw by 1971, and its full 1000 mw capacity by 1972." Under the Commission's license order in Western Massachusetts Electric Co., 39 F.P.C. 723 (1968) and 40 F.P.C. 296 (1968) the municipals have a right to share in the project's

surplus generation although the Licensees have yet to produce a marketing plan. To any customer of Edison the five-year notice requirement would render that right meaningless and nugatory. While the Towns will take the position that the municipals cannot thus be foreclosed from this and other projects, the Commission's action aids Edison's effort to block municipal purchase of bulk power, and at least, creates legal uncertainty.

Moreover, again as noted by this Court, the efforts of the municipals have succeeded to the point where they are now being offered a share of the nuclear plants under construction. Vermont Yankee, a 540 mw generator at Vernon, Vermont, is scheduled to be in operation in 1971 and Maine Yankee, an 800 mw generator at Wiscasset, Maine, 1972. (Footnote 14, supra)

Initially, the Massachusetts municipal systems were denied the opportunity to participate in those projects. However, this Court, in a suit challenging the Securities and Exchange Commission's authorization for the issuance of common stock, remanded the proceeding with directions that the municipals' antitrust contentions be considered. See Municipal Electric Ass'n of Massachusetts v. SEC, 134 U. S. App. D. C. 145, 413 F.2d 1052 (1969). On July 30, 1970, following a reopened proceeding, the SEC approved a settlement agreement pursuant to which 35 Massachusetts municipals will be offered a total of some 60,000 kW from the two Yankee plants while

other similarly situated utilities will be offered 73,000 kW (SEC, Holding Company Act Release No. 16794; see Motion to Withdraw, filed in this Court on August 26, 1970, Municipal Electric Ass'n of Massachusetts v. SEC, Docket Nos. 23,568 and 23,569). Reading has the option to purchase a minimum of some 5,900 kW and, to the extent that the other municipals do not accept the offer, it will have the opportunity to obtain up to 14,700 kW. Wakefield has the option to obtain 2,300 kW minimum, and as much as 5,800 kW.

Again Edison, by its unilateral filing and the Commission's blind acquiescence, seeks to preclude any such participation. Reading and Wakefield will have to make their commitments within approximately three months. Now their participation is obstructed, and the solution which was evolved to meet the antitrust problems in New England, is upset by Edison which, ironically, is not even a sponsor of the nuclear plants or a party to the agreement approved by the Securities and Exchange Commission.

Furthermore, following the completion of a 345 kv transmission line from Wiscasset, Maine to New Brunswick, Canada, between 200 and 350 mW of low-cost power will be imported. Originally, participation by municipal companies was denied. More recently the twenty-one municipals that had expressed a desire to participate -- including Reading and Wakefield -- were notified that they would be

permitted to so do providing that they undertake the necessary commitments by December 1, 1970. That opportunity too is impeded by Edison's filing and the Commission's ready acceptance.

Finally, under the preliminary New England Power Pool  
15/ agreement to the extent now worked out, the small systems which are now tied to one supplier would be given opportunity to purchase bulk and firm power anywhere in New England. The viability of that agreement is now very much in doubt as far as Edison customers are concerned. Edison's actions, embraced by the Commission, are hardly calculated to reassure the small utilities that they will be treated fairly by the large companies, or that they will be protected by the Commission.

In short, the Edison filing, which the Commission has declined to reject, seeks to force its customers to give up their opportunity to participate in the solutions being evolved to meet the power problems in New England. Its plain effect is to lock those customers into a single source of supply -- Edison.

Edison's proposed Peaking Unit Exception arbitrarily limits the installation of peaking generating capacity to no more than 20% of the customer's annual peak load. This provision likewise is unduly restrictive on its face and has the effect of impeding customers'

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15/ Interim NEPEX Power Exchange Agreement, together with attached documents, filed FPC May 20, 1970.

efforts to obtain a lower cost alternative to paying Edison's rates. The most economical and reliable units may well be larger than 20% of the peak load, particularly in the earlier years. After all, the sizing of peaking generation depends upon a number of factors, including size and characteristic of the load being serviced, the rate of load growth, and the number of units to be installed.

Additionally, by requiring Edison's consent to resales to other customers, the tariff filing would seek to preclude a customer from selling power to another wholesale customer, or at least provide Edison with control over the purchasing utilities which would compete with it for wholesale customers. With Edison and its municipal customers (such as Reading) interested in securing other municipal resale customers, this restrictive provision obviously has a highly anticompetitive effect.

While the effects of unreasonably excessive rate provisions can somewhat be ameliorated by subsequent refund orders, the anticompetitive effects of these restrictive provisions can never be rectified. Once customers of Edison (such as the Towns here) forego the opportunity of participating in a large, low-cost generating unit, that opportunity can not be revived by subsequent Commission fiat (especially since the Commission has limited jurisdiction over nuclear

and fossil-fuel plants). Similarly, once an Edison customer has lost a potential long-term wholesale sale, that loss will continue for what ordinarily is an extended contract period.<sup>16/</sup>

Since these provisions of Edison's rate filing are contrary to public policy, if not unlawful, on their face, the Commission was bound to reject the filing. Having instead accepted the filing -- notwithstanding its finding that the tariff may contain provisions which are "unduly discriminatory, or preferential" -- the Commission, we submit, clearly committed reversible error.

## 2. The Edison Filing Violates the Commission's Regulations

Section 301(a) of the Federal Power Act, 16 U.S.C. 825(a), provides that ". . . every . . . public utility shall make, keep and preserve for such periods, such accounts, records of cost accounting procedures . . . other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act . . ."

In recognition of the importance of proper accounting procedures particularly with reference to the discharge of its rate regulatory responsibilities, the Commission has provided that applicants for rate increases not only must file supporting financial data,

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<sup>16/</sup> The holdings to the effect that the Commission must act to nip anticompetitive transactions in their incipiency would therefore appear particularly relevant here. See California v. FPC, supra, and City of Pittsburgh v. FPC, 99 U.S. App. D.C. 113, 237 F.2d 741 (1956).

but that data must be "in the form prescribed by the Commission's Uniform System of Accounts . . ." 18 C.F.R. § 35.13. Of the fifteen detailed statements which that regulation requires be submitted with a rate filing, two relate to depreciation:

"Statement E - Accumulated depreciation.

A statement of the accumulated provision for depreciation by functional classification as of the beginning and end of the test period.

\* \* \*

"Statement I - Depreciation expense.

For the test period show depreciation expense by functional classification. The annual rates used in computing such expense and the method of determining such depreciation rates should also be shown." 17/

Thus, an applicant for a rate increase must segregate its total accumulated depreciation account as to types of generation, transmission, distribution and general plant and must show the charges for depreciation expense by separate functions. Edison has failed to comply with these requirements and candidly conceded in its filing that ". . . no breakdown between various kinds of property has been made on the books of the Company" (Statement E, submitted with its rate filing).

The regulation also requires that the annual rates used in computing depreciation expense and method of determining depreciation rates be shown. Edison failed to disclose either its annual

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17 These statements give effect to requirements of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, 18 C.F.R. Ch. I(C). Accounts Nos. 108 and 403.

depreciation rates or the method by which its rates were determined. All that is stated is that the amount of depreciation is believed by management to be sufficient to meet property write-offs at the end of its usual life.(Statement I, per Edison submission, January 29, 1970)

The aggregate lump-sum figures which Edison has submitted make it impossible to test the reasonableness of Edison's figures. It transfers to all other parties the heavy burden of developing themselves the functional allocations when all of the critical underlying data is under the control of Edison. Since depreciation expense and reserves have a pronounced effect on rate base, cost of service, and many other calculations which go to make up the justification for a rate increase, the manner in which those reserves and expenses are determined and allocated have a significant impact on Edison's rates to its wholesale customers. This problem is complicated by the fact that Edison is engaged in retail distribution as well as wholesale sales. In these circumstances it is imperative that there be a separation of depreciation reserves and expenses between the two classes of business in order to assure that the rates charged each includes only the appropriate allocation. Edison's customers are entitled to compliance with the Commission's rules especially where such is necessary if they are to be able to test the accuracy of the Company's claims. Edison's customers should not be placed under

the burden of having to rewrite the company's books in order to analyze the rate case.

These are substantial matters. The reserve for depreciation amounts to nearly 30% of Edison's total rate base. Obviously, through the allowance for return and income taxes it has a major impact upon the cost of service (\$55.0 million out of a claimed total of \$186.9 million, per Edison submission, Statement L). Again, depreciation expense is another major component of the cost of service (\$18.7 million, id). Absent compliance with the Commission's Regulations, Edison retains considerable discretionary leeway to allocate these items as best may serve the Company's objectives in a particular case.

For these reasons, the Commission's failure to reject the Edison filing until it complied with the rules constitutes reversible error.

3. Edison is Not Rendering a Public Utility Grade of Service

The Commission erred in permitting Edison to put a 20% rate increase into effect notwithstanding the evidence that it has not, and will not for the foreseeable future, render adequate service to its customers. The Towns, in a second motion to reject filed on April 22, 1970, documented in detail Edison's service inadequacies (R. 545 - 575).

Essentially, the motion was predicated on three grounds:

- (1) the fact that voltage reductions, on a system-wide basis, have become frequent and substantial and appear to be on the increase;
- (2) Edison's own warnings to Reading, Wakefield and other municipal customers that it does not expect to provide reliable, uninterrupted service in the near future and is restricting the connection of new loads; and (3) Edison's failure to proceed with the construction of its portion of transmission facilities needed to assure that Reading will be able to serve its winter 1970-71 requirements.

The Commission did not find the Towns' service inadequacy contentions either baseless or insubstantial. Rather, in a separate order issued on June 26, 1970, it found (R. 741):

"Good cause exists for granting the Municipalities' request for an investigation into whether the quality and adequacy of electric service rendered by Edison may affect the lawful rates to be charged for such service . . . and to incorporate that issue into this consolidated proceeding as hereinafter ordered."

In view of that finding the Commission could not permit Edison to effectuate immediately a more than \$2.7 million dollar assessment against customers it has failed properly to serve -- certainly it could not sanction the increase unless the company were first to establish that added revenues are required to bring its service up to a public utility standard. Edison made no such contention

and its failure so to do is understandable: as already noted, Edison earned an 8.5% rate of return in 1969 (up from 8.1% in 1968) and in the twelve month period ending June 30, 1970 its earnings per share of common stock increased approximately 25% over earnings for the comparable period ending June 30, 1969 (\$3.49 as compared to \$2.80).

(p. 18, fn. 10, supra)

a. Voltage Reductions are Substantial, Frequent and Increasing

System voltage reductions have become substantial and frequent, and are on the increase. These reductions, as detailed to the Commission, occurred on 39 days during the year ending March 31, 1970, for a total duration of 183.5 hours. There were 75 3/4 hours in which the reduction was 5%, and 107 3/4 hours of 2% reduction (R. 549).

Their frequency is increasing. In March 1969, there were reductions on 3 days for a total duration of 7.5 hours; in March, 1970 there were 11 reduction days with 68.50 reduction hours. There were 22 week days in March 1970 and on one-half of these days voltage reductions were in effect. In 1969, there were no voltage reductions between March 10th and June 29th; in 1970 between March 13th and March 31st reductions were experienced on 9 days for a total of almost 40 hours.

These voltage reductions have significant adverse effects on the operation of customer equipment and appliances. Industrial

customers, particularly those utilizing precision equipment, are complaining. Moreover, the reductions signal the fact that reserves are inadequate, and therefore insufficient to protect against widespread service interruptions. March 1970 was mild, and March is a relatively low-load season. Yet reserves were insufficient to carry that load at design voltage; rather, having brought on all available reserves, power must still be rationed by reducing voltage. During voltage reduction, there is little reserve left to protect the service. Should a major generating unit be lost for service during a period of reduced voltage, load shedding and blackouts will occur.

b. Edison has itself Predicated Major Service Interruptions

Edison officials are predicting major service interruptions during 1970. Reading and Wakefield have formally been notified by Edison that ". . . the Company may be forced to interrupt electrical service to some of the communities under certain load and contingency conditions."<sup>18/</sup> Edison's letter-warning discloses that Reading and Wakefield are among 36 communities as to which "service interruptions in parts of and, in some cases all of the . . . communities can be expected" and point out that ". . . the Company, where pertinent, plans to refuse to connect new electric loads, and may find it necessary to ask large industrial customers to limit or curtail their

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18/ Boston Edison letter of March 19, 1970 to 36 Massachusetts communities (R. 566-567).

operations . . ." Finally, it urges the communities ". . . to review your local procedures particularly with respect to essential municipal services."

c. Edison Has Failed to Proceed with the Construction of Transmission Facilities Needed to Assure Reading Adequate Service

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Reading's jeopardy is compounded by Edison's unwillingness to commit itself to a 115 kV interconnection which the parties had agreed upon for operation by November, 1969. Reading has invested or committed some \$1.3 million, cleared the right-of-way to the delivery point near the town border, could have completed the connection in 1969, and expects to complete work by October 1970.

Since 1966 Reading has been seeking a commitment from Edison to interconnect at 115 kV near its load center, and an agreement was finally reached on May 31, 1968 on the details of the 115kV service.

Nevertheless, Edison had not begun construction at the time of the January, 1970 filing herein although the need for the interconnection had become critical. As Edison phrased it in March, 1970 (R. 427):

"Contrary to the claim of Reading and Wakefield that Edison knows that by November 1, 1970 Reading will be purchasing at 115 kv, the service date is neither known nor can be known and is, in fact, a matter of speculation." (emphasis added)

As of today, Reading observes that Edison has begun construction but

has no assurance as to when the connection will be made.

4. The Inadequacy of the Commission's Response

When first apprised, by Edison itself, of the serious service problems the Chief of the Commission's Bureau of Power, at the request of its Chairman, advised Edison on April 6, 1970 (R. 639):

"The Federal Power Commission has no particular jurisdiction in this case. We are vitally interested, however, in the adequacy and reliability of electric service and are concerned about any problems which may jeopardize the power supply.

"I trust you will find it possible to proceed expeditiously with some plan for meeting the summer loads in the western and northern portions of your system, and I will appreciate your keeping us informed currently of any further developments affecting this situation."<sup>19/</sup>

At best that disclaimer of jurisdiction is incredulous for Edison's rate filing was actively pending before the Commission. Indeed, less than three weeks after that letter was sent the Commission permitted the filing to become effective with but a one day suspension.

As noted, in its order of June 26, 1970, the Commission recognized the seriousness of the service problem and found that "Good cause exists for granting the Municipalities' request for an investigation into whether the quality and adequacy of electric service rendered by Edison may affect the lawful rates to be charged for such service . . . ." (R. 741).

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<sup>19/</sup> Attached as Exhibit F to Edison's response to the Towns' Motion to Reject the filing on grounds of service inadequacies.

It is commendable that the Commission finally recognized that it has a responsibility for service and the means by which to take action; it is lamentable that its response was so inadequate.

The ultimate question is whether a utility, which already is earning a more than adequate rate of return, is to be permitted to inflate further its profits while its service is deteriorating. It was unfortunate enough that the Interstate Commerce Commission permitted passenger rates to increase while service was deteriorating. The problem is even more acute in the case of electric service for we are dealing with a commodity which is essential to the public health and welfare and for which the public may have no alternative upon which it can rely.

In view of the foregoing, it was incumbent upon the Commission to reject the Edison filing. At a minimum, in light of the serious infirmities in that submission, the Commission was obliged to explain in detail its justification for accepting the filing. Here, as in Moss v. CAB, et al., \_\_\_ U.S.App. D.C. \_\_\_, \_\_\_ F.2d \_\_\_, No. 23,627, July 9, 1970, the Commission "has determined rates and the record made in so doing is inadequate for judicial review." id. at Slip Opinion p. 18. To be sure, here the Commission has not finally determined rates. However, it has permitted the effectuation of a rate schedule

which not only is in violation of its own regulations but also contains restrictive provisions which violate national antitrust policy and which will cause the municipal customers of Edison irreparable injury. Accordingly, the impact of its order is every bit as immediate as a final rate determination. Since the Towns are entitled to judicial review of the Commission's refusal to reject the filing (See United Gas Pipeline Co. v. Mobile Gas Service Corp., supra, p. 25 ) they and the court, are entitled to detailed findings. Factually, there was far greater justification for the action of the CAB in Moss than could be offered in support of the Commission's action here. In Moss v. CAB this Court expressed sympathy for the carriers alleged revenue deficiencies but concluded that "there is more to rate-making than providing carriers with sufficient revenue to meet their obligations to their creditors and to their stockholders." id. at Slip Opinion p. 20. Here there is no suggestion -- nor could there be -- that Edison is in a revenue deficient position.

In recent months this Court has underscored the need that agency action be based on detailed -- not conclusory -- findings. The Court made this very clear in Environmental Defense Fund v. Hardin, \_\_\_\_ U.S.App. D.C. \_\_\_\_, \_\_\_\_ F.2d \_\_\_\_, No. 23,813, May 28, 1970 (Slip Opinion p. 11): ". . . the basis for [the administrative] decision should appear clearly on the record, not in conclusory

terms but in sufficient detail to permit prompt and effective review."

See also Medical Committee for Human Rights v. SEC, \_\_\_ U.S. App.

D.C. \_\_\_, \_\_\_ F.2d \_\_\_, No. 23,105, July 8, 1970 (Slip Opinion p. 42).

The recent decision in Public Service Commission of New York v. FPC,

\_\_\_ U.S.App. D. C. \_\_\_, \_\_\_ F.2d \_\_\_, No. 23,446, June 29, 1970, is

particularly instructive. Petitioner there challenged a Commission

order authorizing the construction of facilities necessary to permit

the transportation of natural gas from off-shore Louisiana to a

petroleum refinery. It contended that such use would be an inferior

one and prejudicial to the public which has a greater need for gas for

residential heating purposes. The Commission declined to pass on

the end-use question but did indicate its belief that whether or not it

approved the facilities requested "gas from these reserves will

continue to be transported to the Pascagoula refinery," id. at Slip

Opinion p. 5. This Court felt compelled to "remand this proceeding

to the Federal Power Commission for a reconsideration and articulation

of its views." id. at Slip Opinion p. 6. As the Court stated (ibid):

"This court as the appellate tribunal is entitled to rely upon the expertise of the Federal Power Commission, and indeed is required to give proper weight to such expertise, but it is not entitled to rely blindly on such purported expertise.

"In this particular proceeding the parties adversely affected by the Commission's decision, and seeking to

attack it, have been forced to base their attack on the failure of the Commission to consider certain important factors and the failure to specify the rationale back of the Commission's decision. Surely the parties involved are entitled to a more explicit exposition of the rationale behind the Commission's decision than appears in the two opinions filed. The Commission's decision and the rationale supporting it may be entirely valid, but the Commission cannot take refuge in its alleged expertise in this field, when it does not set forth convincing reasons for its determination in sufficient detail to allow the validity of those reasons to be critically examined by the parties adversely affected and to allow this Court to pass on the reasonableness of the Commission's conclusions."

The Commission's decision here is every bit as deficient.

In response to the Towns detailed motion to reject the Edison filing the Commission summarily states (in its order of April 29) that "Good cause exists to deny the motion filed by Reading and Wakefield on February 24, 1970, requesting the rejection of Edison's submittal of Rate S-1 and to accept for filing Rate S-1."

The Commission did not even mention the alleged anticompetitive provisions, let alone explain why it would be permissible to allow those restrictive clauses to become effective, especially in view of their prejudicial impact to the Towns over the next several months. The Commission was similarly silent about Edison's failure to comply with applicable accounting rules, as it was about each of the infirmities detailed by the Towns in support of their motion.

Surely here, as in Medical Committee, supra, (Slip Opinion p.6): "the parties involved are entitled to a more explicit exposition of the rationale behind the Commission's decision." Having failed to "set forth convincing reasons for its determination in sufficient detail to allow the validity of those reasons to be critically examined by the parties adversely affected and to allow this Court to pass on the reasonableness of the Commission's conclusions" the Commission's decision to accept the rate schedule must be set aside.

II

**THE COMMISSION ABUSED ITS DISCRETION IN  
REFUSING TO SUSPEND THE EDISON RATE  
FILING FOR FIVE MONTHS AS AUTHORIZED BY  
THE FEDERAL POWER ACT**

The Commission compounded its error in accepting the Edison rate filing with its anticompetitive and other serious irregularities by suspending it for only one day notwithstanding its authority under Section 205 of the Federal Power Act to suspend rate filings for up to five months and notwithstanding the Commission's traditional practice of suspending rate filing for that full period as a matter of course in the absence of special circumstances. That action, as the dissent of Commissioner Carver points out, is unprecedeted. Even were this not the case, it plainly is inconsistent with the Commission's finding that:

"The proposed increased rates and charges contained in [the filing] have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful under the Federal Power Act." (R. 587)

At the outset we are compelled to respond to the Commission's statement that its refusal to suspend is not a reviewable order.<sup>20/</sup>

Concedely whether, and for how long, a rate filing is to be suspended calls, in the first instance, for the exercise of Commission discretion. But it also follows that the exercise of that discretion is in no sense invulnerable to judicial review. This is particularly so here since there can be no question but that the Commission's refusal to suspend for the full statutory period has an immediate and direct adverse impact upon the Towns. See Amarillo-Borger Express v. United States, 138 F. Supp. 411 (N.D. Tex., 1956) (Three Judge), vacated as moot, 352 U. S. 1028 (1957); Long Island Railroad Co. v. United States, 140 F. Supp. 823 (E.D. N.Y., 1956) (Three Judge); Dixie Carriers, Inc. v. United States, 143 F.Supp. 844 (S.D. Tex., 1956) (Three Judge) vacated as moot, 355 U. S. 179 (1958); Seatrain Lines, Inc. v. United States, 168 F.Supp. 819 (S.D. N.Y., 1958).

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<sup>20/</sup> In a footnote to its Order of May 26 denying the Joint Motion for an Emergency Amendment, the Commission states: "Our suspension order is not an appealable order under Section 313 of the Federal Power Act."

21/  
(Three Judge).

Each of those cases involved the initial suspension of a rate filing by the Interstate Commerce Commission followed by the dissolution of the suspension on reconsideration upon the ICC finding, without amplification, that "good cause" had been shown therefor. In each case the ICC argued that it had unreviewable discretion. In each case the three judge court disagreed.

There is little distinction between intervention by a court to overturn a regulatory commission's decision to cut short a suspension period and action by the court to overturn a commission's refusal to suspend for the appropriate period.

It is interesting, that in each of those cases the suspension was sought by a competing carrier who allegedly was being injured by discriminatorily low rates. It would appear to follow a fortiori that similar protection should be available to a customer-competitor who is being denied the benefit of the full statutory suspension

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21 / FPC v. Metropolitan Edison Co., 304 U. S. 375 (1938) and Shell Oil Co. v. FPC, 334 F. 2d 1002 (3rd Cir. 1964) (mis cited by the Commission as Humble Oil & Refining Co. v. FPC) cited by the Commission in its Order of June 26, 1970, are not to the contrary. The former holds that the denial of an application for rehearing (which we have in the instant case) is a condition precedent to judicial review (the Commission had ordered a general investigation into the Petitioner's corporate structure but its order had no immediate effect on Petitioner and indeed need not ever have had such an effect) and the latter holds that the acceptance by the Commission of a rate filing subject to suspension does not preclude a subsequent determination that the filing should not be accepted.

and the ability to compete because of increased rates and restrictive  
provisions thus made effective prematurely. As Amarillo-Borger  
(138 F.Supp. at 415, fn. 9) and Dixie Carriers (143 F. Supp. at 851,  
fn. 12) make clear, persons aggrieved by a rate filing, that is those  
who suffer adverse financial effects, have standing to challenge the  
regulatory agencies refusal to continue the suspension for the  
appropriate period.

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22/ Also, we must not ignore the fact that as a result of the Edison  
filing, the rates to consumers purchasing from the Towns will  
correspondingly be increased. If anything is clear, it is that the  
Commission's primary responsibility is to protect such consumers  
fully from possibly unwarranted rate increases. See Atlantic  
Refining Co. v. Public Service Comm'n of New York, supra, and  
FPC v. Hunt, 376 U. S. 515, 524-525 (1964). See also FPC v.  
Sierra Pacific Power Co., 350 U. S. 348, 351 (1956) which emphasizes  
that decisions construing the Commission's responsibility under the  
Natural Gas Act apply with no less force to its obligations under the  
Federal Power Act.

23/ Arrow Transportation Co. v. Southern Ry, 372 U. S. 658 (1963)  
is not to the contrary. There the Supreme Court simply held that  
the courts did not have the authority to extend the statutory suspension  
period. Luckenbach Steamship co. v. United States, 179 F. Supp.  
605 (D. Del., 1959); Bison Steamship Co. v. United States, 182 F. Supp.  
63 (N.D. Ohio, 1960); and National Industrial Traffic League v. United  
States, 287 F. Supp. 129 (D.D.C., 1968) are distinguishable for each  
involved instances where the ICC declined to grant any suspension  
and the Court in Oscar Mayer & Co. v. United States, 268 F. Supp. 977  
(W.D. Wisc., 1967), although in seeming conflict with the Amarillo-  
Borger line of cases, was impressed that there had been a failure to  
exhaust administrative remedies. Of critical significance, however,  
is that the Supreme Court in Arrow noted the Amarillo-Borger line of  
cases without any suggestion of disapproval.

To be sure, as noted, the determination of whether, and for how long, a rate filing is to be suspended calls for the exercise of discretion. But it is equally the case that there are degrees of discretion and the mere fact that an agency has discretion does not mean that its exercise "is . . . thereby placed beyond judicial review." Environmental Defense Fund, Inc. v. Hardin, supra, Slip Opinion p. 8. Rather, before judicial review is cut-off it must be clear that Congress so intended. See Medical Committee for Human Rights v. SEC, supra, Slip Opinion pp. 11, 24-25. No such showing can be made here.

That the Commission in fact abused its discretion in refusing to suspend for five months is easily demonstrated. In challenging the filing and requesting, at a minimum, the full five month statutory suspension, the Towns detailed not only the restrictive and anticompetitive aspects of the tariff, the failure to comply with accounting requirements and the inadequate service that Edison has been and is continuing to render, but several additional objectionable features of the filing including Edison's failure to make the required revenue comparisons between proposed and superseded rates, ambiguities confusing the applicability of the tariff, failure to file the most recently available financial data and the utilization of a stale test year.

Reading is particularly prejudiced by the filing. It has committed itself to the purchase and installation of approximately \$1,300,000 in facilities which, with Edison's cooperation, could have been completed and in service well within the 5-month suspension period. Nonetheless, without suspension larger than one day, Reading must pay the 13.8 kV surcharge until such time as Edison is willing to make the connection.

Notwithstanding all of this, the Commission suspended for but one day. It is important to note that in so doing the Commission, without explanation, failed to adhere to its long-standing consistent practice. In Yucca Petroleum Co., 29 F.P.C. 211 (1963) the movant requested (29 F.P.C. at 212):

". . .that the suspension period for its proposed rate be limited to one day. In support thereof, Yucca states that as a contractual matter the rate increase was to become effective December 10, 1961 and that another producer selling gas pursuant to the same contract has been collecting the same increase in rate, subject to refund, under another rate schedule since May 1, 1962.

"In our view, a lesser suspension period than the five month suspension period permitted under Section 4(e) of the Natural Gas Act should not be authorized except in those instances when strong equitable considerations dictate that a shortened suspension period is warranted. Such considerations are not involved here. The mere fact that Yucca under its contract could have filed for the subject rate increase at an earlier date, but failed to do so, does not warrant a

shortening of the suspension period herein. Nor does the fact that another producer selling gas pursuant to the same contract took the necessary steps to place the same rate increase in effect subject to refund at an earlier date provide sufficient justification for a shortened suspension period."

The principle of Yucca Petroleum has consistently been followed and applied in numerous cases virtually simultaneously with the Commission action here. In an order issued on May 28, 1970 the Commission denied a request for a one day suspension stating: "We are of the view that good cause has not been shown for the limited suspension requested by Algonquin." (Algonquin Gas Transmission Co., Docket No. RP70-30). On February 19, 1970 the Commission suspended for five months an electric company's increase of \$819,000 to twelve municipal customers (Union Electric Co., Docket No. E-7525); on July 21, 1970 it did the same with respect to a \$312,410 (or 9.1%) increase to ten municipalities (Wisconsin Electric Co., Docket No. E-7546); on August 5, 1970 it followed its customary five-month suspension practice with respect to a producer's \$768 increase to a major natural gas pipeline company (Coline Oil Corp., Docket No. RI 71-89); and on August 14, 1970 it suspended a modification of fuel adjustment clause for the five months (New England Power Co., Docket No. E-7541). The latter is significant for there was a need to determine the legality of the clause as soon as possible. Hence,

the Commission ordered "a formal hearing at the earliest possible time to attempt to reach a decision before the suspension period" expires (Docket No. E-7541, Order, p. 2.). Orderly process would seem to mandate the same course of action here especially since the same question of the legality of Edison's fuel adjustment clause is here in issue.

It is apparent that Edison did not meet the burden of establishing "that good cause [supports] the limited suspension . . ." Algonquin Gas Transmission, supra. Certainly, the Commission made no effort to detail what "strong equitable considerations dictate that a shortened suspension period is warranted." In his initial dissent, Commissioner Carver summarized the equities as follows (R. 593):

"Any 'irretrievable loss' that might result from suspension for five months should be put in realistic perspective. Over the maximum suspension period, the increase sought by Boston Edison represents about six-tenths of one per cent of its total annual revenues from the sale of electricity. By contract, the interim cost increase to its five municipal customers would exceed 5.5% of their total annual electric utility operating income. Any risk of uncertainty would thus work much harsher consequences upon the customer than the rate increase applicant."

Even beyond those immediate effects the refusal to suspend for the appropriate statutory period will result in long-term losses

and inequities to the municipals. First, and foremost, as we have detailed, supra pp. 31-37 , a direct result of the immediate effectuation of the rate provisions will be to prejudice the municipals' ability to participate in the Vermont and Maine Yankee nuclear generating plants, and to purchase a share of the output of the Northfield Mountain pumped-hydro project or the New Brunswick project involving power importation from Canada -- a plain violation of this Court's holdings. Had the anticompetitive restrictions been stayed for the routine five month period the municipals would have been cleared, in the interim, to arrange for alternative, lower-cost sources of supply for a portion of their needs. All of this was frustrated by the one day suspension.

Second, if a five month suspension had been directed it is possible that the municipals (principally Reading) could have utilized that period to work out their transmission difficulties with Edison -- difficulties that not only have a direct economic bearing, but threatened reliability of service as well.

Third, on the question of adequacy of service, it must be recognized that the five month suspension would have carried all parties past the crucial summer months during which period Edison's service, by its own admission, will be inadequate and unreliable.

Instead, the Commission chose to make the municipalities pay a premium for those inadequacies.

Moreover, the Commission could have conditioned its order on elimination of the service deficiencies, thereby serving notice that it is acting decisively to prevent the deterioration of electric service which is spreading throughout the country.

It follows, therefore, that the Commission abused its discretion in declining to suspend for the statutory five month period. The situation here is closely parallel to that in Amarillo-Borger and Dixie Carrier. There the ICC, once having decided to suspend a rate filing, failed to give legally sufficient justification for shortening the period. Here the Commission, having found that suspension is required in the public interest, has failed to give a legally sufficient justification for its failure to afford the Towns the protection of the five month suspension period provided for in Section 205(e). To be sure the Commission apparently was impressed by the thought that postponement of the increased rates would cause Edison to suffer an irretrievable loss but in view of Edison's 8.5% rate of return over-all the conclusion defies logic. All that would happen is that the amount of its excessive profit would be reduced.

The Court in Hope Natural Gas Co. v. FPC, 196 F.2d 803 (4th Cir. 1952), rejected an effort to have an approved rate made

effective from the beginning of the suspension period. According to the Fourth Circuit, Congress recognized that the regulated company would suffer a loss of revenues during the suspension period. The answer, said the Court (196 F.2d at 806):

" . . . is that Congress made express provision for the refund of the excess portion of rates collected after the expiration of the suspension period but made no provision whatsoever for collecting any additional amount for the period of suspension."

The Commission also considered that any excess revenues would be ultimately refunded -- as a reason for not suspending for five months. However, the Supreme Court repeatedly has dispelled any illusion that refunds are adequate to protect the overcharged customer. As the Court said in FPC v. Tennessee Gas Transmission Co., supra, (371 U.S. at 154-155) and reiterated in FPC v. Hunt, supra, (376 U. S. at 524-525):

"True, the exaction would have been subject to refund, but experience has shown this to be somewhat illusory in view of the trickling down process necessary to be followed, the incidental cost of which is often borne by the consumer, and in view of the transient nature of our society which often prevents refunds from reaching those to whom they are due."

If the refund authority were adequate to protect these interests all rate increases would be suspended for only one day. The Commission routinely suspends electric and pipeline rate increases for five months

precisely because it recognizes that refunds are inadequate to afford the consumer protection intended by Congress when it gave the Commission the authority to suspend for five months. The Commission does not disclose what unique factor operates to give Edison the special advantage of a one-day suspension.

Here, not only will the usual consumer prejudice apply, but the Towns will be subjected to what the Commission has characterized as possibly "unduly discriminatory" rate provisions prejudicing their ability to compete with Edison for industrial and resale customers. Moreover, we are not dealing with a mere increase in rates. As Commissioner Carver pointed out in his April 29 dissent (R. 593):

"Apart from Commission practice, a conceivable case for short-term suspension might exist if the filed rates merely related rate of return to increased production and delivery costs. That is not the case here; Boston Edison's proposed Rate S-1 incorporates fundamental changes in rate design and conditions of service. It is by no means apparent that they have such prima facie validity as to presage ultimate approval."

That fundamental change in rate design necessitates comparable changes in the rate schedules of Edison's customers -- a fact which in and of itself necessitates suspension for the full five month period. Complex rate redesign cannot be accomplished in a matter of days.

In no sense can it be said that the "equitable considerations dictate that a shortened suspension period is warranted." It is impossible to balance the equities without reaching the conclusion that the Commission abused its discretion in ignoring its consistent administrative practice and declining to suspend for the statutory five month period. Certainly where, as here, the Commission departed from a consistent administrative practice which has in effect become a gloss on the Federal Power Act, it was incumbent upon it to give cogent reasons for its departure and its failure to do so constitutes reversible error. For, in the words of the Supreme Court as recently quoted by this Court, "The Commission has not adequately explained its departure from prior norms and has not sufficiently spelled out the legal basis of its decision." Secretary of Agriculture v. United States, 347 U. S. 645, 652-3 (1954) quoted in FTC v. Crowther, et al., \_\_\_\_ U.S. App. D.C. \_\_\_, \_\_\_\_ F.2d \_\_\_, Nos. 23924 and 23, 927, June 25, 1970 (Slip Opinion p. 7). In view of this failure the Commission's refusal to suspend for five months must be set aside.

III

THE COMMISSION COMMITTED REVERSIBLE  
ERROR IN PERMITTING THE RATE FILING TO  
BECOME EFFECTIVE IN CONTRAVENTION OF  
THE SIXTY-DAY NOTICE REQUIREMENT

Section 205(d) of the Act prohibits changes in rate schedules, "unless the Commission otherwise orders . . . except after thirty days' notice to the Commission and to the public." Construing identical language in the Natural Gas Act, the Court in Pan American Petroleum Corp. v. FPC, 287 F.2d 469, 472 (10th Cir. 1961) found these words "compel[led] the conclusion that the 30-day notice period is a minimum procedural requirement imposed upon petitioner rather than a limitation set upon the Commission powers."

The Commission, which under Section 309 has wide authority to prescribe such rules and regulations as it may find necessary (see Niagra Mohawk Power Corp. v. FPC, 126 U. S. App. D.C. 376, 379 F.2d 153 (1967)), has provided that "if the rate schedule provides for an increased rate, then 60 days prior to the date that such changed rate is to become effective the filing public utility shall submit" the required supporting documentation. 18 C.F.R. 35.13(b)(4)(i).

In its Order of April 29, 1970, the Commission finds that Edison had not submitted a complete filing until March 30, 1970 (R. 581). "At that time," the Commission continued, "Edison requested that Rate S-1 be made effective 30 days after completion of filing, i.e.,

April 30, 1970." The Commission, without mention of its 60-day regulation, acquiesced.

Subsequently, when the regulation was brought to its attention, the Commission construed Edison's request as "a request for waiver of our 60-day notice provision under the Regulations."

The fact is, however, that Edison never requested a waiver of the regulations -- and therefore never adduced any justification for a waiver -- and the Commission, at least until apprised of the need to be inventive, never thought that it was granting one. This point is made clear in Commissioner Carver's May 26 dissent (R. 712):

"It is clear beyond doubt that the Commission could have waived the time requirements involved, but I think the plain fact is that it did not. Waiver of a regulation having the effect of law is not a matter to be taken lightly: to me, it requires a conscious, affirmative and specific intent and action thereon. The fact is that Section 35.13 (b)(4)(i) of the Regulations played no part in the consideration of this matter. A waiver may not be constructed out of an action which merely ignores the regulation."

The Commission's failure to abide by its own regulations -- or to explain with detailed findings its refusal to do so -- constitutes reversible error. See Amarillo-Borger Express v. United States, supra; Environmental Defense Fund, Inc., v. Hardin, supra.

CONCLUSION

For the foregoing reasons this proceeding should be remanded to the Commission with instructions that it refuse to accept the Edison rate filing. At a minimum, the Commission should be directed to suspend that filing for the statutory five month period.

Respectfully submitted,

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James F. Fairman Jr.  
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Attorneys for Petitioners

September 2, 1970

SUPPLEMENT A

Commission Order Denying Motion to Reject Submission of Rate

Change, dated April 29, 1970. [R-580 - R-593]

Commission Order Denying Joint Motion for Emergency Amendment

of Order, dated May 26, 1970. [R-709 - R-712]

Commission Order Accepting Tendered Document, Treating it as

Motion for Reconsideration and Denying that Motion,

dated June 26, 1970. [R-735 - R-737]

Commission Order Granting Motion in Part, Denying Motion in Part,

and Incorporating Limited Issue of Service Quality and

Adequacy into Consolidated Proceeding, dated June 26, 1970.

[R-738 - R-742]

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;  
Lawrence J. O'Connor, Jr., Carl E. Bagge,  
and John A. Carver, Jr.

Municipal Light Boards of )	
Reading and Wakefield, Massachusetts, )	Docket No. E-7400
Complainants, )	
v. )	
Boston Edison Company, )	
Respondent )	
Norwood Municipal Light Department, )	
Norwood, Massachusetts, )	Docket No. E-7517
Complainant, )	
v. )	
Boston Edison Company, )	
Respondent )	
Boston Edison Company )	Docket Nos. E-7485
	and E-7533

ORDER DENYING MOTION TO REJECT SUBMISSION  
OF RATE CHANGE, SUSPENDING PROPOSED CHANGE  
IN RATE SCHEDULES, INSTITUTING INVESTIGATION,  
CONSOLIDATING PROCEEDING, PROVIDING FOR  
HEARING, AND GRANTING MOTION TO WITHDRAW  
MOTION TO REVIEW BOSTON EDISON COMPANY'S SERVICE

(Issued April 29, 1970)

This order denies a motion to reject proposed change in rates schedules, suspends for one day proposed rate schedule changes, institutes investigation of rates, charges, terms and conditions of jurisdictional rate schedules, provides for hearing, consolidates proceedings for purposes of hearing and decision, and grants a motion to withdraw a

Docket Nos. E-7400, E-7517, E-7485  
and E-7533

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previously filed motion requesting review of electric service rendered by a public utility.

Boston Edison Company (Edison), a public utility subject to the jurisdiction of this Commission, on January 29, 1970, tendered for filing its rate schedule, General Service For Resale, consisting of (1) general terms and conditions, (2) rate for all requirements service, and (3) definition and special conditions of all requirements service. 1/ In its tender, Edison stated that Rate S-1 was to supersede its Wholesale Electric Utility Rate M (Rate M) and to supersede its submission on March 11, 1968, of High-Tension Wholesale Municipal Utility Rate N-1, General Terms and Conditions for Sales for Resale, Miscellaneous Charges Nos. 1 and 2 (Rate N-1). Edison requested that Rate S-1 be made effective April 1, 1970. However, Edison's tender was deficient under our Regulations and was not completed until March 30, 1970. At that time, Edison requested that Rate S-1 be made effective 30 days after completion of filing, i.e., April 30, 1970. By its Rate S-1 filing, Edison proposes to increase its annual billings by approximately \$2,733,000 or 15.7% based upon the 12 month period immediately following the proposed effective date.

In support of its filing, Edison states that the continuing inflation of costs has made it necessary to increase its charges under Rate M and the proposed Rate N-1. Additionally, Edison asserts that Rate S-1 is designed to distribute its costs of service more equitably between resale customers and ultimate consumers and to provide revenues commensurate with its requirements and responsibilities. Edison further states that the new rate schedule is designed to eliminate to some extent the objections raised by some of its customers to its proposed Rate N-1.

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1/ The tender is designated in Appendix A attached hereto and is the subject of the proceeding in Docket No. E-7533. For brevity, this filing shall be referred to as "Rate S-1" throughout this order.

Docket Nos.. E-7400, E-7517, E-7485  
and E-7533

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Protests and objections to Rate S-1 were filed by Boston Gas Company (Boston Gas) and the Towns of Concord, Norwood, Wellesley, Reading, and Wakefield, Massachusetts. 2/ In general, the protesting customers request suspension and investigation of Rate S-1 and question certain items in the cost study submitted by Edison including, among other things, the use of an 8% rate of return, 10% Federal income tax surcharge, allocation of costs between wholesale and retail customers and the inclusion of a fuel clause. Additionally, the municipal customers question the validity of the proposed general terms and conditions for resale service and the definition and conditions of all-requirements service alleging that the notice requirement on installing generating equipment or purchasing from other sources is unduly restrictive. Further, the municipal customers contend that the proposed increase in charges to them cannot be absorbed and will have to be passed on to their retail customers.

On February 24, 1970, the Towns of Reading and Wakefield filed a motion requesting rejection of Rate S-1 on the basis of the initial incompleteness of Edison's filing under our Regulations. On March 6, 1970, Edison filed its answer in opposition to that motion asserting that it had complied with our Regulations. As noted above, Edison's filing at first was deficient, but was completed on March 30, 1970. Thus, we will deny the motion to reject.

Edison's contentions in support of its filing and the protest of its customers raise questions which can best be resolved through a public hearing. Thus, we are ordering a hearing to resolve those questions and we shall suspend for one day the rate schedule filing in Docket No. E-7533 in accordance with Section 205(d) of the Federal Power Act.

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2/ New England Power Company stated that the new rate should be permitted to go into effect without suspension reserving its right, however, to participate in any future proceedings if formal investigation is ordered by the Commission.

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and E-7533

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Rate N-1 was submitted for filing by Edison on March 11, 1968, for 115 kv service to its five municipal wholesale customers. 3/ At present, Edison's only wholesale rate applicable to 115 kv service is its Rate M, under which Edison presently provides 13.8 kv service to its wholesale customers as well as 115 kv service to part of the requirements of New England Power Company. 4/

The proceeding in Docket No. E-7400 involves a filing by the Municipal Light Boards of the Towns of Reading and Wakefield, Massachusetts, on March 13, 1968, of an application and complaint against Edison, their supplier of power. Complainants request an interconnection order under Section 202(b) and 202(c) 5/ of the Act, assertion of Commission jurisdiction over Edison's rates and charges for sales of energy to the

3/ That submittal is designated as follows:

<u>Customer</u>	<u>Designation</u>
Concord, Massachusetts	- Rate Schedule FPC No. 36
Norwood, Massachusetts	Rate Schedule FPC No. 37
Reading, Massachusetts	Rate Schedule FPC No. 38
Wakefield, Massachusetts	Rate Schedule FPC No. 39
Wellesley, Massachusetts	Rate Schedule FPC No. 40

With that submittal, Edison notified the Commission that it was withdrawing Rate N and that Rate N-1 was submitted in lieu thereof. Rate N was submitted for filing on December 21, 1967, and has not been formally acted upon by the Commission.

- 4/ Rate M service is rendered to municipals under Edison's Rate Schedule FPC Nos. 13 through 17; to New England Power Company under Rate Schedule FPC No. 10; and to Boston Gas Company under Rate Schedule FPC No. 3.
- 5/ The issue raised by the request for interconnection under Section 202(c) was resolved by the parties in the manner set forth in Complainants' letter of November 26, 1968, to the Secretary of this Commission.

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and E-7533

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Towns 6/, and an investigation into Edison's rates, charges, classifications, practices, efficiencies, regulations, rules, contracts, and services under Rate M and the proposed Rate N-1.

Several conferences were held between the parties and our staff before the filing of Edison's answer to the complaint. No settlement was reached on the rate level of the present 13.8 kv and proposed 115 kv service nor on the terms and condition of service. However, it was agreed that Reading would apply for, and Edison would arrange for, a 115 kv interconnection at a point mutually agreed upon. The application has been filed by Reading and accepted by Edison. It is anticipated that 115 kv service to Reading will commence by November, 1970.

The complaint requests an investigation into the lawfulness of Rate M and Rate N-1. Complainants allege that Edison's rates are unreasonable due to, among other things, excessively high administrative and general expenses, as well as the incurrence of excessive costs allegedly due to imprudent operation of obsolete plants. They also object to numerous terms and conditions in those rate schedules including, among other things, Edison's alleged distinction between municipally-owned and investor-owned distributors, restraints on their purchase and resale of energy, removal of the fuel adjustment clause, and imposition of certain Miscellaneous Charges.

Edison, in its answer, asserts that its rate level and the terms and conditions for 115 kv service are just, reasonable and lawful. Edison further states that any investigation or hearing on its wholesale rates should be deferred until actual experience has been obtained on 115 kv service to Reading. We disagree. Several of the terms and conditions opposed by these Complainants relate to the conditions under which 115 kv service is to be made available. Accordingly, any delay in ascertaining

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6/ Edison, in its answer to the complaint, stated that it will not contest this Commission's jurisdiction over its sales to the Towns.

Docket Nos. E-7400, E-7517, E-7485  
and E-7533

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the proper terms and conditions of 115 kv service (whether under Rate M, N-1, S-1, or any deviation from those rate schedules) would be both unwarranted and unreasonable.

The proceeding in Docket No. E-7517 involves a complaint filed on December 23, 1969, by the Norwood Municipal Light Department, Town of Norwood, Massachusetts. In that complaint, Norwood requests the Commission to institute a formal investigation into Edison's jurisdictional rates, charges, classifications, practices, and services for 115 kv service and to fix the same. Additionally, Norwood requests the Commission to order Edison to account for amounts collected under that service and to refund any portion found unjustified with interest.

In support of its complaint, Norwood states that it has entered into an agreement with Edison for 115 kv service and has sold bonds in the amount of \$2,300,000, solicited bids, and executed contracts for construction of its portion of the facilities necessary for making the interconnection. Norwood states that under the normal course of events it would have its 115 kv facilities ready by May of 1971, but, as Edison has known for some time, the existing 13.8 kv facilities are inadequate to meet Norwood's anticipated peaks for the summer of 1970. Norwood states that Edison asserted that installation of additional 13.8 kv facilities to meet the anticipated load was too expensive and insisted that Norwood should meet those requirements by early construction of the new 115 kv line. Based on an understanding that Edison would provide it with a 115 kv transformer, Norwood agreed to an early construction date of its 115 kv lines. However, under this arrangement, Edison seeks to charge its Rate M rates for this service, but Norwood wants service under Rate N-1, which Edison would agree to if Norwood would rent two 115 kv transformers from it. Norwood states that, under Edison's proposal to rent transformers, it will lose the savings of Rate N-1 despite its substantial investment in the early construction of those lines and the savings to Edison by this early construction. Additionally, Norwood alleges that certain terms and provisions of Rate N-1 are unjust and unreasonable as to it.

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and E-7533

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On February 16, 1970, Edison filed its answer to Norwood's complaint stating that its proposed Rate N-1 was submitted to this Commission but was not accepted for filing and has not become effective. Edison further states that, on January 29, 1970, Edison withdrew Rate N-1 when it filed its proposed Rate S-1 amending Rate M. Edison states that Rate S-1 is now applicable to all of its total requirements wholesale for resale customers and contains provisions for both high and low tension service. Edison further denies responsibility for the delay by Norwood in obtaining 115 kv transformer for its 115 kv service. Thus, Edison asserts that, under its proposal to let Norwood use its transformer, it will in essence be rendering low tension service for which it must be properly compensated until Norwood's facilities will be ready in May, 1971. Edison further denies that it realizes any savings on Norwood's early construction of these facilities and denies that it insisted on such early construction.

The complaints and answers filed in Docket Nos. E-7400 and E-7517 raise questions of fact and law which can best be resolved by an investigation and a full public hearing; wherein all parties may produce witnesses and adduce evidence on the record before an Examiner of this Commission. Accordingly, we are ordering investigations and hearings on those complaints.

In Docket No. E-7485, Edison tendered for filing a notice of termination of an agreement between it and Boston Gas which was suspended and a hearing ordered thereon by our order issued March 27, 1970. The proposed notice of termination seeks to eliminate the special provisions of Rate M that was applied to Boston Gas. By its elimination, Boston Gas will receive service under Rate M unmodified or Rate S-1, when that rate becomes effective. Boston Gas, however, has challenged the validity of Edison's filing of both the notice of termination in Docket No. E-7485 and Rate S-1 in Docket No. E-7533.

The complaints filed in Docket Nos. E-7400 and E-7517, the suspension proceeding in Docket No. E-7485, and the filing in Docket No. E-7533 contain common questions of law and fact that can best be resolved in a consolidated hearing. Accordingly,

Docket Nos. E-7400, E-7517, E-7485  
and E-7533

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we are consolidating the proceedings in Docket Nos. E-7400, E-7517, E-7485, and E-7533 for purposes of hearing and decision.

In the consolidated proceeding, the Examiner should permit evidence and legal argument on the issue of the status of Rate N-1. In its Rate S-1 filing, Edison stated that Rate N-1 was thereby superseded. In its answer to Norwood's complaint, Edison stated that its Rate N-1 submittal was withdrawn by its Rate S-1 filing. On the other hand, Norwood and Reading have filed for high-tension service under Rate N-1 and have issued bonds on that basis. Rate N-1 is a lower rate than Rate M, and, consequently, Rate N-1, if effective, may be relevant to contentions involving refunds, if any, which might be ordered. Thus the issue of the status of Rate N-1 should be probed and a decision rendered thereon.

On March 27, 1970, Reading and Wakefield filed a motion requesting this Commission to investigate the alleged deterioration of electric service supplied by Edison. On March 31, 1970, those Towns filed a motion to withdraw their motion of March 27, 1970, without prejudice to their refiling a revised motion. We shall grant the motion to withdraw. On April 22, 1970, Reading and Wakefield filed a revised motion to reject the proffered rate submittal restating the general position of the municipalities. We do not reject Edison's filing. To the extent that the motion seeks other relief, it will be considered by the Commission following opportunity for answer by Edison.

The Commission further finds:

(1) Good cause exists to deny the motion filed by Reading and Wakefield on February 24, 1970, requesting rejection of Edison's submittal of Rate S-1 and to accept for filing Rate S-1.

(2) The proposed increased rates and charges contained in Rate S-1 have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful under the Federal Power Act.

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and E-7533

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(3) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 301, 307, 308 and 309 thereof, that the Commission enter upon a hearing concerning the lawfulness of the rates and charges and other provisions contained in Edison's proposed Rate S-1 and that Rate S-1 be suspended and the use thereof deferred as herein-after ordered.

(4) It is necessary and appropriate for the purposes of the Federal Power Act to enter upon an investigation of the issues raised in the complaints filed by Reading and Wakefield in Docket No. E-7400 and by Norwood in Docket No. E-7517 and the answers to those complaints.

(5) Good cause exists for consolidating the proceedings in Docket Nos. E-7400, E-7517, E-7485, and E-7533 for purposes of hearing and decision.

(6) Good cause exists for granting the motion by Reading and Wakefield to withdraw without prejudice a previously filed motion seeking an investigation into the alleged deterioration of electric service supplied by Edison.

The Commission orders:

(A) The motion to reject Edison's submittal of Rate S-1 is hereby denied and Rate S-1 is hereby accepted for filing.

(B) An investigation is hereby ordered into the issues raised by the complaints and answers filed in Docket Nos. E-7400 and E-7517.

(C) The proceedings in Docket Nos. E-7400, E-7517, E-7485, and E-7533 are hereby consolidated for purposes of hearing and decision.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act and pursuant to the Commission's Rules of Practice and Procedure, a public hearing shall be convened to

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and E-7533

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commence with a prehearing conference to be held on May 19, 1970, at 10:00 a.m. (EDT) at the offices of the Federal Power Commission in Washington, D. C. concerning all of the issues raised in the proceedings consolidated by this order.

(E) Pending such hearing and decision thereon, Rate S-1 is hereby suspended and the use thereof deferred until May 1, 1970. On that date, Rate S-1 shall take effect in the manner prescribed by the Federal Power Act, and Edison, subject to further orders of the Commission, shall charge and collect the increased rates and charges set forth in Rate S-1 for all power sold and delivered thereunder.

(F) Edison shall refund at such times and in such manner as may be required by final order of the Commission, the portion of the increased rates and charges found by the Commission in the consolidated proceeding not justified, together with interest at the rate of 8.0 percent per annum, from the date of payment to Edison until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rates and charges effective as of May 1, 1970, for each billing period; and shall report (original and one copy) in writing and under oath, to the Commission monthly, for each billing period, the billing determinants of electric energy sold and delivered under Rate S-1, and the revenues resulting therefrom as computed under the rates in effect immediately prior to May 1, 1970, (including Rate N-1, if appropriate), and under the rates and charges made effective by this order, together with the differences in the revenues so computed.

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and E-7533

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(G) Unless otherwise ordered by the Commission, Edison shall not change the terms or provisions of Rate S-1 until this consolidated proceeding has been terminated or until the period of suspension has expired.

(H) Reading and Wakefield are hereby permitted to withdraw their motion filed on February 24, 1970, without prejudice to their refiling that or a revised motion.

(I) Notices of intervention and petitions to intervene in the consolidated proceeding may be filed with the Federal Power Commission, Washington, D. C. 20426, on or before May 18, 1970, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.37).

By the Commission. Commissioner Carver dissenting filed a  
( S E A L ) separate statement appended hereto.

Gordon M. Grant,  
Secretary.

BOSTON EDISON COMPANY

Rate Schedule Designations  
Filed: March 30, 1970

Instruments: General Service for Resale, General Terms and Conditions  
General Service for Resale, Rate for All Requirements Service, Rate S-1  
General Service for Resale, Definition and Special Condition of All Requirements Service.

<u>Rate Schedule Designation</u>	<u>Customer</u>
FPC No. 45 (Supersedes FPC No. 3 as supplemented)	Boston Gas Company
FPC No. 46 (Supersedes FPC No. 10 as supplemented)	New England Power Company
FPC No. 47 (Supersedes FPC No. 13)	Town of Concord
FPC No. 48 (Supersedes FPC No. 14)	Town of Norwood
FPC No. 49 (Supersedes FPC No. 15)	Town of Reading
FPC No. 50 (Supersedes FPC No. 16)	Town of Wakefield
FPC No. 51 (Supersedes FPC No. 17)	Town of Wellesley

Municipal Light Boards of Reading and Wakefield, Massachusetts, )	)	
Complainants, )	)	Docket No. E-7400
v. )	)	
Boston Edison Company )	)	
Respondent )	)	
Norwood Municipal Light Department, )		
Nortooow, Massachusetts, )	)	
Complainant, )	)	Docket No. E-7517
v. )	)	
Boston Edison Company, )	)	
Respondent )	)	
Boston Edison Company )	)	Docket Nos. E-7485 and E-7533

(Issued April 29, 1970)

CARVER, Commissioner, dissenting:

Clearly, Boston Edison's rate increase filing in these dockets requires suspension for investigation, hearing and decision on the evidence. I must, however, voice objection to the discriminatory treatment reflected in the unexplained determination that the annual rate increase exceeding \$2,733,000 be suspended for one day only.

These proceedings originate in a unilateral filing of a new wholesale rate schedule which will result in an average increase of more than 20% to six of Boston Edison's seven customers. Five of these are municipally operated distribution systems. In no recent case of similar magnitude has this Commission failed to impose the full five month suspension period permitted by Section 205(e) of the Federal Power Act. In Duke Power Co., Docket No. E-7513, the order issued November 20, 1969, suspended a 5.54% increase approximating \$1,650,000 annually for five months and similar action was taken in Union Electric Co., Docket No. E-7525, on a proposed 10.7% increase involving \$819,000 annually. The sole instance of a one-day suspension in the past year involves Boston Edison Co., Docket No. E-7485, which is being consolidated herein. There, however, a minor adjustment in sale terms involved approximately \$58,000 per year.

The reasons for a longer suspension period appear more compelling here than in the situations cited above. A rate increase which is larger in dollar amount and in percentage is being visited upon fewer affected customers. The impact of an unanticipated cost increase will fall most heavily on municipal distribution systems. By the very nature of their operations, such entities maintain narrower financial reserves and have less flexibility to change retail rate structures on short notice.

Apart from Commission practice, a conceivable case for short-term suspension might exist if the filed rates merely related rate of return to increased production and delivery costs. That is not the case here; Boston Edison's proposed Rate S-1 incorporates fundamental changes in rate design and conditions of service. It is by no means apparent that they have such prima facie validity as to presage ultimate approval. Any "irretrievable loss" that might result from suspension for five months should be put in realistic perspective. Over the maximum suspension period, the increase sought by Boston Edison represents about six-tenths of one per cent of its total annual revenues from the sale of electricity. By contrast, the interim cost increase to its five municipal customers would exceed 5.5% of their total annual electric utility operating income. Any risk of uncertainty would thus work much harsher consequences upon the customer than the rate increase applicant.

The public interest is ill served by an action of this Commission which is so discriminatory on its face and so unsound in its potential impact on the affected Massachusetts consumers.

  
John A. Carver, Jr., Commissioner

R- 70

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;  
Lawrence J. O'Connor, Jr., Carl E. Bagge,  
John A. Carver, Jr., and Albert B. Brooke, Jr.

Municipal Light Boards of )  
Reading and Wakefield, Massachusetts, )  
Complainants,) )  
v. ) Docket No. E-7400 )  
Boston Edison Company, )  
Respondent. )  
Norwood Municipal Light Department, )  
Norwood, Massachusetts, )  
Complainant, ) )  
v. ) Docket No. E-7517 )  
Boston Edison Company, )  
Respondent )  
Boston Edison Company Docket Nos. E-7485  
and E-7533

ORDER DENYING JOINT MOTION FOR  
EMERGENCY AMENDMENT OF ORDER  
(Issued May 26, 1970)

This order denies a motion to modify the suspension period contained in our order issued April 29, 1970.

By order issued April 29, 1970, we, inter alia, suspended a proposed increase in rates tendered by Boston Edison Company (Edison) for one day until May 1, 1970. On May 8, 1970, the Municipal Light Boards and Departments of the Towns of Reading, Wakefield, Concord, Norwood, and Wellesley, Massachusetts (Municipalities) filed a joint motion requesting the Commission to amend its order of April 29, 1970, so as to suspend and defer the increased rate until July 1, 1970, in order to permit them time to place in effect increases in their retail rates tracking Edison's increase to them.<sup>1/</sup>

1/ Our suspension order is not an appealable order under Section 313 of the Federal Power Act. Thus, the joint motion is not, and should not be construed as, a petition for rehearing. The joint motion seeks reconsideration of a suspension order and is treated as a motion for reconsideration.

In support of their motion, the Municipalities contend that the one-day suspension has created a financial emergency which requires at least two months for them to track Edison's increase into their retail rates. They state that without this additional time they will be forced to operate at a deficit or substantial loss. The Municipalities assert that they had anticipated a full 5-month suspension of Edison's proposed increase which period would have permitted them to make the necessary adjustments in their retail rates. They now assert that July 1, 1970, is the earliest reasonable date for them to implement changes in their retail rates. Further, the Municipalities contend that "equitable considerations" dictate that a period of time be given that would be sufficient for them to adjust their rates and that any injury that Edison might experience with a 5-month suspension period would only be one that was contemplated by Congress when it wrote the 5-month suspension period into the Federal Power Act.

Edison, on May 13, 1970, filed its answer to the Municipalities' motion and requested denial of that motion. Edison challenges the Municipalities' contention that a financial emergency will result from the one day suspension. Edison states that, even if a temporary deficit may occur for May and June 1970, rate relief is available under Massachusetts law which would permit the Municipalities to recoup that loss over the remainder of the year. Additionally, Edison points out that, while the increased rates are to be effective May 1, 1970, billings under the new rates will not be made until June 1970. The Municipalities, on the other hand, can implement their rate changes immediately after permission has been obtained for those changes. Thus, Edison claims that the emergency situation claimed by the Municipalities is unsupported and unfounded.

The motion and answer present a factual difference as to whether a financial emergency exists because of the one-day suspension ordered by us. However, that difference is not crucial to determination of the issue involved here. It appears that relief is available to the Municipalities under State law even to the extent of recouping any losses that may result from the time lag of tracking Edison's increase into their retail rate structure. On the other hand, any relaxation of our one day suspension period will result in an irretrievable loss to Edison. Furthermore, the increased rates are being collected by Edison subject to refund of any amounts found unjustified at an interest rate of 8%. Under these circumstances, we believe that the public interest is best served by our determination to suspend the increased rate for one day.

On May 13, 1970, Boston Gas Company (Boston Gas) filed its response and support of the Municipalities' motion. Boston Gas states that it too cannot fully track Edison's increase unless the Massachusetts Department of Public Utilities waives the normal waiting period to permit Boston Gas' increase to go into effect at an earlier date. Boston Gas contends that it had no reason to seek any emergency relief since it expected the Commission to suspend Edison's increase for the five-month period. In addition, Boston Gas states that it had good reason to believe that, at a minimum, the increase would not become effective until May 31, 1970, since Edison did not seek waiver of the 60-day notice provision of Section 35.13 (b) (4) (i) of our Regulations (18 CFR 35.13(b)(4)(i)). However, with the additional data required to complete its filing, Edison, by letter dated and filed March 30, 1970, requested the Commission to assign a filing date to its rate schedule and to permit that rate schedule to become effective 30 days thereafter. That request was, in essence, a request for waiver of our 60-day notice provision under the Regulations. The legal effect of our order was to waive the notice provision which action was consistent with our determination to suspend Edison's proposed rate increase filing for one day. Any other action would require Edison to defer collection of its increased rates which we found, and still find, to be inimical to the public interest.

The Commission further finds:

Good cause exists to deny the joint motion filed by the Municipalities on May 8, 1970, for amendment of our order issued April 29, 1970 in these proceedings.

The Commission orders:

The joint motion filed by the Municipalities on May 8, 1970, requesting an emergency amendment of our April 29, 1970, order is hereby denied.

By the Commission. Commissioner Carver dissenting  
( S E A L ) filed a separate statement  
appended hereto.

Gordon M. Grant,  
Secretary.

R. 712

Municipal Light Boards of )  
Reading and Wakefield, Massachusetts, )  
Complainants,) )  
v. ) Docket No. E-7400  
Boston Edison Company, )  
Respondent.) )  
Norwood Municipal Light Department, )  
Norwood, Massachusetts, )  
Complainant,) )  
v. ) Docket No. E-7517  
Boston Edison Company, )  
Respondent.) )  
Boston Edison Company ) Docket Nos. E-7485  
and E-7533

(Issued May 26, 1970)

CARVER, Commissioner dissenting:

My dissent to the original order in this proceeding is unaffected by the attempted justification set forth in the current order. The Commission persists in its discriminatory treatment of the complainants; I must continue to object.

The present order adds a new objectionable element to the case. In answer to the Boston Gas allegation that the order issued April 29, 1970 violated the Commission's own Rules of Practice, the present order proceeds on a theory that there had been a waiver of the regulation in question. It is clear beyond doubt that the Commission could have waived the time requirements involved, but I think the plain fact is that it did not. Waiver of a regulation having the effect of law is not a matter to be taken lightly: to me, it requires a conscious, affirmative and specific intent and action thereon. The fact is that Section 35.13(b)(4)(i) of the Regulations played no part in the consideration of this matter. A waiver may not be constructed out of an action which merely ignores the regulation.

  
John A. Carver, Jr., Commissioner

R. 73:

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

PRACTICE AND PROCEDURE (Rehearing)

Before Commissioners: Albert B. Brooke, Jr., Acting Chairman;  
Lawrence J. O'Connor, Jr., and  
John A. Carver, Jr.

Municipal Light Boards of Reading And Wakefield, Massachusetts, Complainant,	)	
v.	)	Docket No. E-7400
Boston Edison Company, Respondent.	)	
Norwood Municipal Light Department, Norwood, Massachusetts, Complainant,	)	
v,	)	Docket No. E-7517
Boston Edison Company Respondent.	)	
Boston Edison Company	)	Docket Nos. E-7485 and E-7533

ORDER ACCEPTING TENDERED DOCUMENT, TREATING IT  
AS MOTION FOR RECONSIDERATION AND DENYING THAT MOTION  
(Issued June 26, 1970)

This order accepts the document tendered for filing by Municipal Light Boards and Departments of the Towns of Reading and Wakefield, Massachusetts (Towns) on May 28, 1970, treats it as a motion for reconsideration of our order issued April 29, 1970 and denies that motion.

On May 28, 1970, the Towns tendered for filing a document entitled "Application for Rehearing" which seeks rehearing of our order issued April 29, 1970, under Section 313(a) of the Federal Power Act and Section 1.34 of the Commission's Rules of Practice and Procedure. That order, however, was a procedural order that, inter alia, denied a motion to reject a rate increase filing, suspended that filing, and provided for a hearing on the lawfulness of the proposed rate increase. Accordingly, an application for rehearing under Section 313 (a) of that order does not lie. See, e.g., F.P.C. v. Metropolitan

Docket Nos. E-7400, et al. - 2 -

Edison Co., 304 U.S. 375, 383; Humble Oil & Refining Co. v. F.P.C., 334 F. 2d 1002, 1007 (CA3, 1964). Section I.34 of our Rules does not enlarge the scope of appealable orders under the Federal Power Act. However, we shall treat the Towns' tender as a motion for reconsideration and shall, to the extent warranted, consider the substantive arguments advanced therein.

The arguments advanced by the Towns are arguments that have been urged in a number of filings made by them and other parties to this proceeding, which were considered and denied by us in our orders issued April 29 and May 26, 1970. In summary, they allege that we erred (1) by not rejecting the rate proposal, (2) by accepting it for filing, and (3) by suspending it for only one day. In their arguments, they assert procedural irregularities and substantive deficiencies as bases for contending that we should have rejected and not accepted for filing the rate proposal filed by Boston Edison Company (Edison). However, the substantive issues raised by the Towns, e.g., antitrust and anti-competitive contentions, quality of service rendered, etc., do not warrant rejection of this rate filing. Those matters may be relevant to the issue of rate level but are not relevant to the procedural issue of whether we should accept for filing or reject the rate increase proposal. This is especially true, as here, when the increased rates are being collected subject to refund. If the rate level is excessive, the Towns will receive refunds with interest. On the other hand, if we were to reject the rate proposal and then determine that the substantive contentions advanced by the Towns lack merit, Edison could not recover those lost revenues. In our judgment, the public interest requires adherence to the procedural decisions made in this proceeding.

The Commission finds:

(1) Good cause exists for accepting the document tendered by the Towns on May 28, 1970, and treating it as a motion for reconsideration.

(2) It is appropriate for purposes of the Federal Power Act that the motion referred to in (1) above be denied.

Docket Nos. E-7400, et al. - 3 -

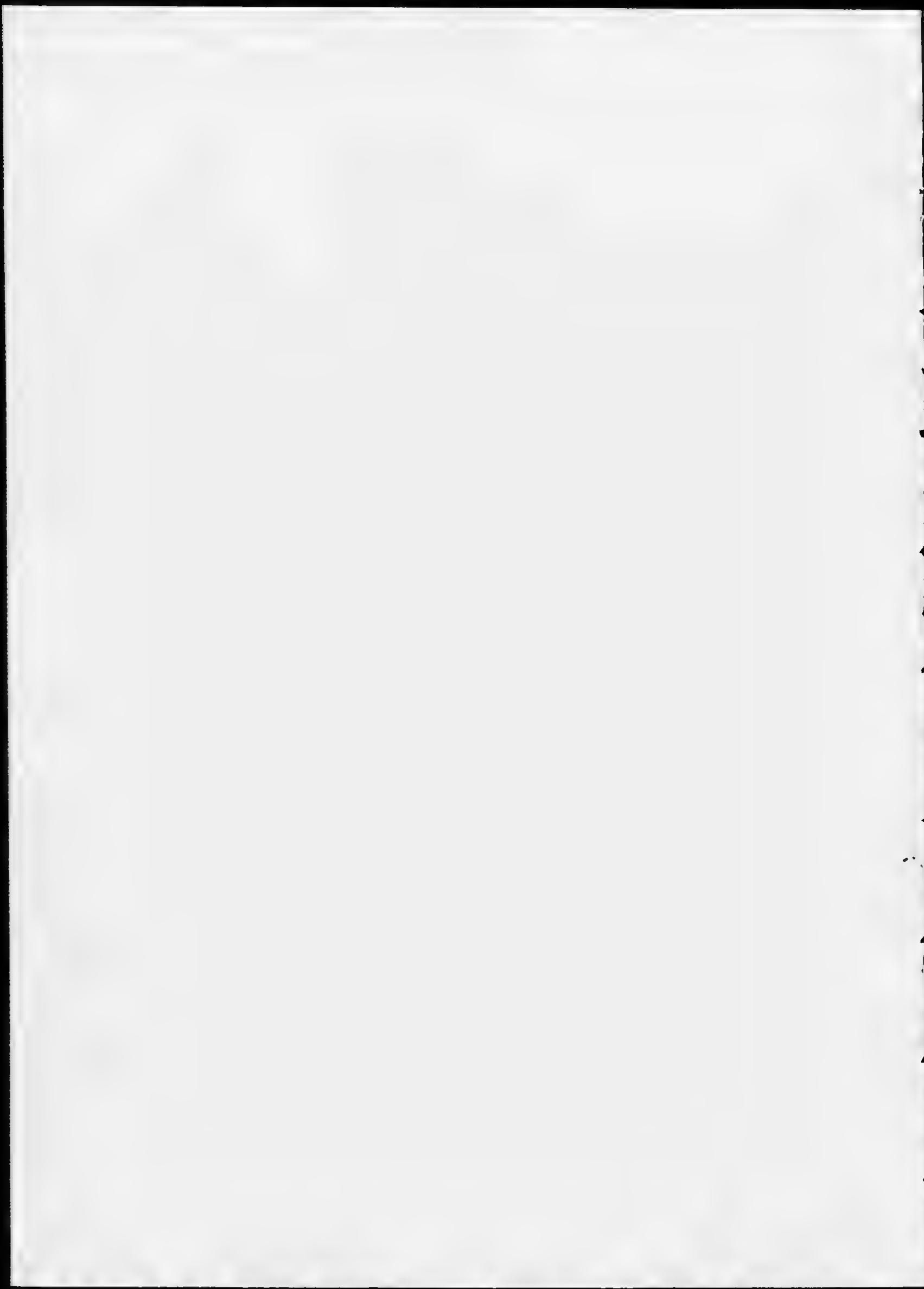
The Commission orders:

(A) The document entitled "Application for Rehearing" and tendered for filing by the Towns on May 28, 1970, is accepted and treated as a motion for reconsideration of our order issued April 29, 1970, in this proceeding.

(B) The Towns' motion for reconsideration of our order issued April 29, 1970, is hereby denied.

By the Commission. Commissioner Carver adheres to his  
( S E A L ) original views set forth in his  
dissenting statements appended to  
the orders issued April 29, 1970,  
and May 26, 1970.

Gordon M. Grant,  
Secretary.



UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: Albert B. Brooke, Jr., Acting Chairman;  
Lawrence J. O'Connor, Jr., and  
John A. Carver, Jr.

Municipal Light Boards of Reading )  
And Wakefield, Massachusetts, )  
Complainant, ) Docket No. E-7400  
v. )  
Boston Edison Company, )  
Respondent. )  
  
Norwood Municipal Light Department,)  
Norwood, Massachusetts, )  
Complainant, )  
v. ) Docket No. E-7517  
Boston Edison Company, )  
Respondent. )  
  
Boston Edison Company ) Docket Nos. E-7485  
and E-7533

ORDER GRANTING MOTION IN PART, DENYING MOTION  
IN PART, AND INCORPORATING LIMITED ISSUE  
OF SERVICE QUALITY AND ADEQUACY INTO  
CONSOLIDATED PROCEEDING

(Issued June 26, 1970)

This order grants, to a limited extent, a request filed by Motion April 22, 1970, that the question of whether the quality and adequacy of Boston Edison Company's (Edison) wholesale electric service may affect the lawful rates to be charged for such service be investigated and incorporated as an issue in this consolidated proceeding.

The Motion was filed by the Municipal Light Boards and Departments of Reading and Wakefield, Massachusetts, (Municipalities). In it they requested rejection of

Docket Nos. E-7400, et. al. - 2 -

Edison's proposed Rate S-1 rate increase filing on the grounds that Edison is not furnishing a utility grade of electric service. Alternatively, the Municipalities requested the Commission to investigate the alleged inadequate electric service rendered by Edison, to give notice to the Massachusetts Department of Public Utilities and others of this matter, and to defer assignment of a filing date and acceptance for filing of the rate increase proposal.

By our Order issued April 29, 1970, we accepted the Rate S-1 rate schedule for filing, suspended its operation for one day, provided for public hearing on the lawfulness of that rate schedule (Docket No. E-7533) and consolidated that hearing with investigations of formal complaints filed by three of Edison's municipal customers (Docket No. E-7400, E-7517), and another proposed rate increase tendered by Edison which was suspended by order issued March 27, 1970 (Docket No. E-7485). In the April 29 order we also denied the Motion filed by Municipalities on April 22, 1970, insofar as that Motion requested rejection of Edison's Rate S-1 rate increase filing. As to the other relief requested in that Motion, we stated that we would consider the remainder of the Motion "following opportunity for answer by Edison." Thus, the issue remaining before us is Municipalities' request for an investigation and incorporation into this consolidated proceeding of the issue of the quality and adequacy of Boston Edison's wholesale electric service.

In support of the Motion, the Municipalities contend that the electric service from Edison has had frequent and substantial voltage reductions and that the frequency of those reductions is on the increase. They also contend that Edison officials are predicting major service interruptions during 1970 because of power supply and transmission problems and that Edison is planning to place limitations on the connection of new loads because of those expected interruptions. The Municipalities also contend that electric service

Docket Nos. E-7400, et. al. - 3 -

to the Town of Reading is further jeopardized by Edison's unwillingness to commit itself to the 115 kv interconnection which the parties had agreed upon for operation by November, 1969. Municipalities contend that rates must be related to service under the Federal Power Act and that when service is inadequate the utility is not entitled to increase its rates.

On May 4, 1970, Edison filed its answer requesting the Commission to deny the Motion to the extent that it was not previously denied by the order of April 29, 1970. In its answer, Edison states that not all of the voltage reductions are due to problems on Edison's own system, but rather, are area-wide reductions for the protection of the New England power grid. Edison also disputes, as a factual matter, the number and duration of voltage reductions set forth in the Motion. Further, Edison denies that it is responsible for the delay in constructing the transmission lines needed for reliable, uninterrupted service during the 1970 summer peak. Edison also asserts that it has diligently pressed to meet the completion date desired by Reading for the 115 kv interconnection.

In further response, Edison contends that the adequacy of service issue is not properly presented in a rate proceeding under the Federal Power Act.

To the extent that the Motion and Answer thereto raise questions involving adequacy and reliability of electric service in the New England area as a whole, we do not believe a rate investigation involving a single company in that region is a practical or appropriate forum for consideration of such issues, and these issues are specifically excluded from consideration in this proceeding. Order No. 383-2, issued April 10, 1970, provides an orderly means for Commission consideration of these questions.

Docket Nos. E-7400, et. al. - 4 -

However, the Motion raises service questions which involve Boston Edison alone, namely, the alleged failure to provide timely 115 kv service to Reading, possible limitations on power use and connection of new loads in the summer of 1970, and alleged voltage reductions which may be due in part to problems on Edison's own system. Edison states in its Answer that not all voltage reductions are due to problems on its own system, it does not deny that there may be voltage problems relating solely to its own system. Additionally, the Motion and Answer raise factual questions as to the number and duration of the voltage reductions alleged. It is appropriate that we consider in this proceeding whether interstate rates should be adjusted to reflect these specific alleged service inadequacies to the extent that they relate to Edison's system.

The Motion also seeks to invoke this Commission's authority under Section 207 of the Federal Power Act. We find it unnecessary to reach this question in light of Order No. 383-2 and our consideration in this proceeding of the local service questions described above.

The inclusion of this issue in the consolidated proceeding will occasion no change in the dates for service of Edison's case-in-chief and for cross-examination set by the Presiding Examiner at the prehearing conference held May 19, 1970.

The Commission further finds:

Good cause exists for granting the Municipalities' request for an investigation into whether the quality and adequacy of electric service rendered by Edison may affect the lawful rates to be charged for such service, except to the extent that it involves questions of the reliability and adequacy of electric service on a New England-wide basis, and to incorporate that issue into this consolidated proceeding as hereinafter ordered.

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Docket Nos. E-7400, et. al. - 5 -

The Commission orders:

(A) The Motion filed by the Municipalities on April 22, 1970, is granted insofar as it requests an investigation into whether the quality and adequacy of electric service rendered by Edison to its wholesale customers may affect the lawful rates to be charged for such service, exclusive of New England-wide problems of reliability and adequacy of electric service. In all other respects, the Motion is denied.

(B) The issue referred to in (A) above is hereby incorporated into the consolidated proceeding in Docket No. E-7533.

By the Commission.

( S E A L )

Gordon M. Grant,  
Secretary.



SUPPLEMENT B

STATUTES AND REGULATIONS INVOLVED

Section 205(e) of the Federal Power Act, 16 U.S.C. 824 (e) provides in part:

"Whenever any such new schedule is filed the Commission shall have authority, either upon complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective."

Regulations under the Federal Power Act provide in part:

'§35.5 Rejection of Material submitted for filing.

The Secretary, pursuant to the Commission's rules of practice and procedure and delegation of Commission authority, shall reject any material submitted for filing with the Commission which patently fails to substantially comply with the applicable requirements set forth in this part, or the Commission's rules of practice and procedure."

'§35.13 Filing of changes in rate schedules.

\* \* \*

(b)(4)(i) Except as provided in subdivision (ii) of this subparagraph, if the rate schedule provides for an increased rate, then 60 days prior to the date that such changed rate is proposed to become effective the filing public utility

shall submit a statement showing its cost of the service to be supplied under the new rate schedule according to supporting statements A through O as described below. Simultaneously, the public utility shall submit the material on sales and revenues described in paragraph (a) of this section and, unless the rate schedule containing the proposed increased rate is likewise simultaneously filed, a summary statement of such proposed increased rate: Provided, however, That the submittal of such summary statement of the rate schedule shall not be in lieu of the rate schedule as required to be filed with the Commission pursuant to the regulations in this part."



BRIEF FOR THE FEDERAL POWER COMMISSION

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24450

United States Court of Appeals  
for the District of Columbia Circuit

Municipal Light Boards of  
Reading and Wakefield, Massachusetts,

Petitioners,

*Nathan J. Paulson*  
Clerk

Federal Power Commission, Respondent,

Boston Edison Co., Intervenor.

ON PETITION TO REVIEW AN ORDER OF THE FEDERAL POWER COMMISSION

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General Counsel,

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FEDERAL POWER COMMISSION,  
WASHINGTON, D. C. 20426.

OCTOBER 1970

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CLERK OF THE UNITED  
STATES COURT OF APPEALS



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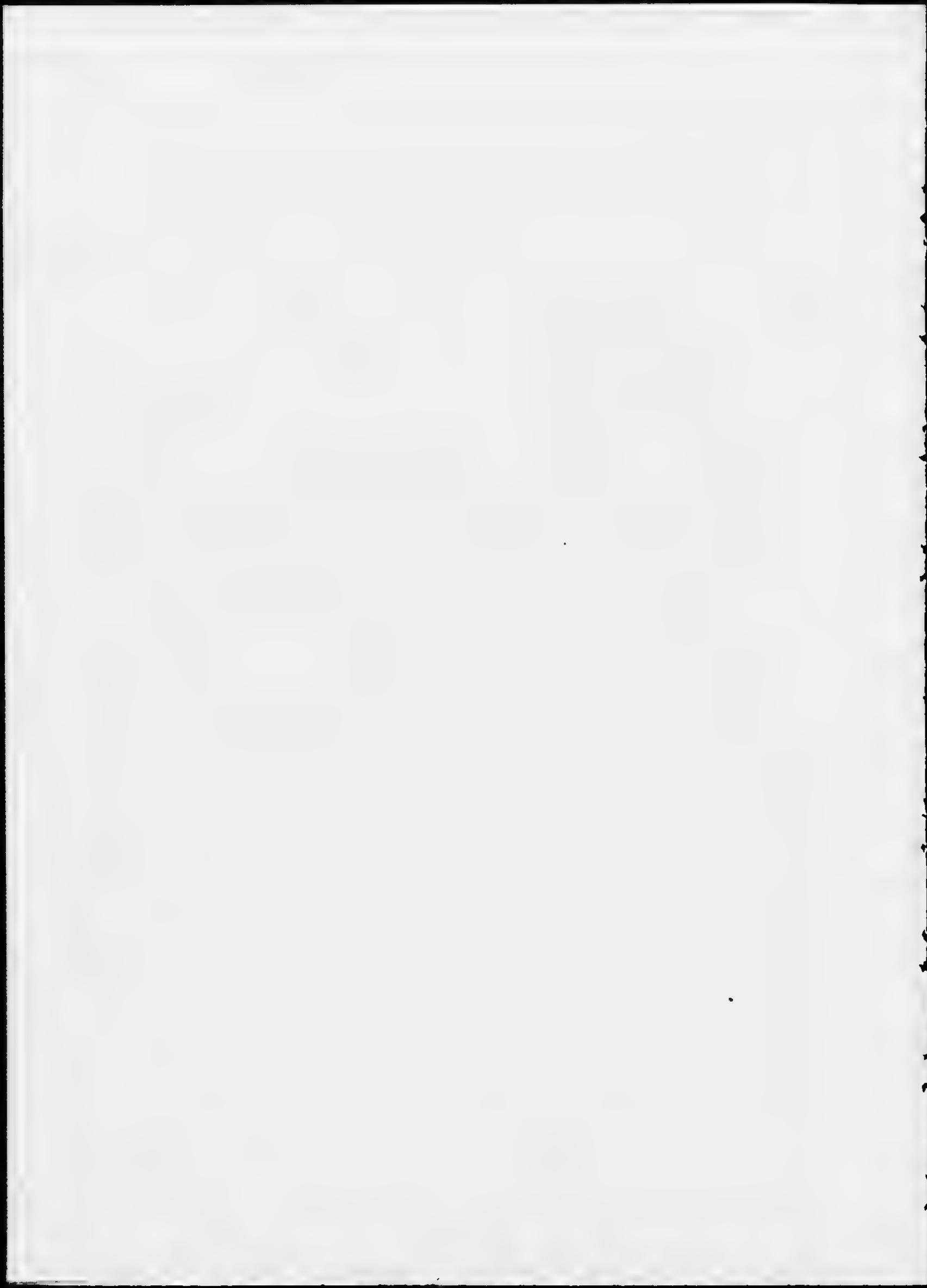
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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24450

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Municipal Light Boards of  
Reading and Wakefield, Massachusetts,  
Petitioners,

v.

Federal Power Commission,  
Respondent,

Boston Edison Co.,  
Intervener.

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ON PETITION TO REVIEW AN ORDER OF  
THE FEDERAL POWER COMMISSION

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BRIEF FOR THE FEDERAL POWER COMMISSION

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COUNTERSTATEMENT OF THE ISSUES PRESENTED

1. Whether the Commission appropriately determined that the antitrust and quality of service contentions raised did not permit summary rejection of Edison's changed rate schedule without an evidentiary hearing.
2. Whether the Commission reasonably concluded that the data filed by Edison was in substantial compliance with the Commission's regulations.
3. Whether the Commission's exercise of discretion in suspending Edison's rate schedule filing for one day is reviewable.

4. Whether the Commission was warranted in waiving the 60-day period for filing cost data in support of an increased rate.

This proceeding has not previously been before this Court.

#### COUNTERSTATEMENT OF THE CASE

This case concerns a challenge by the Municipal Light Boards of the Towns of Reading and Wakefield, Massachusetts (Towns), to the preliminary treatment by the Commission of a rate increase filing by Boston Edison Company (Edison), their wholesale supplier of electric energy. Edison, a jurisdictional public utility under Part II of the Federal Power Act, supplies the Towns' full requirements, as well as making sales to several other utility and municipal customers. All of these customers are affected by the rate increase.

The initial Edison filing. On January 29, 1970, Edison submitted for filing its proposed rate increase which was intended to supersede the company's existing "M" rate schedule (R. 282-318). The new rate schedule, in addition to increasing the rates themselves, contained certain changes in the terms of service. 1/

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1/ Both the old and new rate schedules were applicable only to wholesale customers. The old schedule permitted the customer to terminate service after expiration of any specified term by giving twelve months' notice. The new schedule states that either party may terminate service under the rate schedule, which is generally applicable only to full requirements customers, by giving five years' notice or "other notice reasonable in the circumstances as the Company and the Customer may agree" (R. 296). The new schedule provides, however, that a customer may continue under the full requirements schedule if upon two years' notice, it installs peaking capacity of not over 20 percent of its annual peak. If the customer desires to install or purchase part of its capacity requirements from other sources, the Company will make available [Footnote continued.]

Edison proposed to make the new rates effective on April 1, 1970 (R. 282). Prior to that date, on March 17, 1970, the Commission's Secretary notified Edison of certain deficiencies in the data accompanying the filing, which it would be required to remedy before an official filing date could be assigned (R. 444-446). Edison supplied these additional data to the Commission and its customers on March 30, 1970 (R. 470-524).

The Towns' motion to reject. On February 24, 1970, the Towns moved to reject the Edison filing (R. 349-408), contending that it was incomplete in several particulars and that it contained provisions prima facie contrary to the antitrust laws. Two days later the Towns sent a letter to the Commission (R. 409-416) commenting on the rate filing and urging that, if it was not rejected, it should be suspended for the maximum five-month period permitted by the Act and made the subject of an investigation and hearing. The Towns asserted (R. 410) that each of the grounds for rejection set forth in their earlier motion also constituted a ground for suspension, investigation and hearing.

In general, the objections raised by the Towns in these two documents concerned either deficiencies in the data and explanatory matter filed by Edison or provisions in the filing which

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[Footnote continued.]

a partial requirements rate, upon reasonable notice by the Customer. "Unless otherwise agreed, reasonable notice shall be understood to mean five (5) years \* \* \*" (R. 297). (R. 296-297). Other changes include a rate differential favoring customers taking at high voltage (115 KV), a metering method based on KVA rather than KW--amounting to a power factor adjustment--, and a new fuel adjustment clause (R. 313-315).

the Towns viewed as unreasonable, restrictive or discriminatory. Thus, in the first category they objected, inter alia, to the failure of Edison to state accumulated provisions for depreciation by functional classification (generation, transmission, distribution, etc.) (R. 362-366); and its failure to functionalize depreciation expense (R. 366-369). In the second category, they objected to various provisions in the proposed rate schedule as anticompetitive, including the provision that power purchased under the proposed rate could not be resold in bulk to another utility without Edison's consent (and then only under another rate schedule, not specified in the filing) (R. 379-380) and the requirement of five years' notice (absent agreement otherwise) in case a customer intended to supply part of its requirements by self-generation or purchase elsewhere (except for customer peaking units of not over 20% of annual peak, where two years' notice was required) 2/ (R. 380-383).

In their letter of February 26, 1970 (R. 409-416), the Towns added, as grounds for suspension, objections to the new fuel adjustment clause, the allegedly excessive rate of return claimed, failure to set forth rates for partial requirements service or for transmission service (e.g., for power purchased from the Yankee atomic plants), the allegedly discriminatory difference between Edison's proposed wholesale rate and its industrial rate, and the design of the former, several features of the pro-

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2/ Following such a change, Edison would serve the customer at a partial requirements rate not set out in the filing.

visions for changeover from low to high-voltage service, the change from KW to KVA billing, the provision purporting to relieve Edison of liability for interruptions unless caused by willful default, and some features of the allocations used and of the billing provisions.

Edison answered the Towns' motion to reject on March 6, 1970 (R. 424-440). With respect to the depreciation questions, Edison stated that it had not in the past functionalized depreciation, even for its own purposes, and that the results of a study being conducted for that purpose would be supplied when available (R. 431). As to all of the allegations of anticompetitive effects, Edison argued that their merits had to be determined by the customary hearing process and not by the "misdirected interposition into the filing process of substantive considerations" (R. 434-436), and argued in some detail the reasonableness and necessity of each of the provisions attacked (R. 437-440).

Thereafter, the Towns filed another motion to reject the filing, in this instance on the ground that Edison was failing to provide a utility grade of service (R. 545-575, 579; April 22, 1970). 3/ This motion was based on past voltage reductions, Edison's alleged failure to go forward with construction of 115 KV facilities to serve Reading, and anticipated service interruptions and limitations on serving new loads during the summer of 1970.

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3/ This motion superseded a request for an investigation of Edison's service, filed March 27, 1970, and later withdrawn.

The Commission's order. On April 29, 1970, the Commission issued an order initiating a hearing to consider the various issues presented, suspending the Edison filing for one day, after which it was to go into effect subject to refund, and denying the Towns' motions to reject (R. 580-591). Commissioner Carver dissented on the single ground that the filing should have been suspended for more than one day. (R. 592-593). In its order, the Commission consolidated with the new filing a pending rate investigation initiated by the Towns (Docket No. E-7400), as well as proceedings involving the Town of Norwood (Docket No. E-7517) and Boston Gas Co. (Docket No. E-7485). The Commission found that Edison's filing should not be rejected since, though incomplete as made, it had been brought into compliance with the Commission's regulations by the supplemental filing of March 30, 1970 (R. 582). The Commission also noted (R. 582):

Edison's contentions in support of its filing and the protest of its customers raise questions which can best be resolved through a public hearing. Thus, we are ordering a hearing to resolve those questions \* \* \*.

Similar findings were made with respect to the issues raised in the other consolidated dockets (R. 586). The Commission, with regard to the motion to reject on grounds of inadequate service, also declined to reject, but stated that to the extent the motion sought other relief it would be considered when Edison had answered it (R. 587). Edison filed such an answer on May 4, 1970 (R. 597-641).

Subsequently, on May 8, the Towns (joined by certain other parties) requested an "Emergency Amendment of Order" (R. 642-656)

to postpone the effective date of Edison's increase to July 1, 1970. The Towns contended that under a one-day suspension they would be required to operate at a deficit for some two months (the time claimed to be needed to effectuate a tracking increase in their rates). Edison's answer to the motion (R. 660-674) denied the existence of the claimed financial emergency. Boston Gas Company, which had associated itself with the Towns' motion, also argued that as Section 35.13 (b)(4)(i) of the Commission's Regulations requires the filing of some supporting data 60 days before the proposed effective date, and since the Commission found that Edison's filing was not technically complete until March 30, 1970, its customers might reasonably have expected the increase to become effective no earlier than May 31, 1970 (R. 679-680).

On May 26, 1970, the Commission denied the motion (R. 709-711), Commissioner Carver again dissenting. It pointed out (R. 710) that

\* \* \* It appears that relief is available to the Municipalities under State law even to the extent of recouping any losses that may result from the time lag of tracking Edison's increase into their retail rate structure. On the other hand, any relaxation of our one day suspension period will result in an irretrievable loss to Edison. Furthermore, the increased rates are being collected by Edison subject to refund of any amounts found unjustified at an interest rate of 8%.

As to the separate argument raised by Boston Gas, the Commission explained that, together with the additional data required to be filed, Edison had included a request for an effective date 30 days later, i.e., April 30, 1970. This request

was treated as a request for waiver of the 60-day filing period for cost data, and the effect of the Commission's one-day suspension order was therefore to grant that request (R. 711).

On May 28, 1970, the Towns filed an application for rehearing (R. 713-732) wherein they argued that the Commission had erred in denying the original motion to reject without giving reasons therefor; in accepting the filing in the face of the objections raised by the Towns as to its compliance with the Regulations and its allegedly anticompetitive provisions; in assigning May 1, 1970, as the effective date rather than a date 60 days after the completion of the filing; in denying the motion to reject on service grounds without giving reasons; in accepting the increase for filing in the face of Edison's alleged failure to provide utility-grade service, and despite the omission of definite partial requirements and transmission rates; and, for a number of particularized reasons, in suspending the filing for one day rather than five months.

By order of June 26, 1970 (R. 735-737), the Commission, treating the motion as a request for reconsideration on the ground that the order complained of was a non-appealable procedural order on which rehearing was not available under Section 313 of the Act, denied relief. It pointed out that the substantive issues raised by the Towns were relevant not to the question whether the filing should be accepted but to the merits of the proposed rates. The Commission therefore adhered to its decision to conduct a hearing, pointing out that if the increased rates were found unjustified the Towns

would receive refunds, whereas rejection could lead to an irreparable loss for Edison (R. 736).

By another order (R. 738-742), issued the same day, the Commission made part of the rate proceeding the service inadequacies alleged by the Towns, to the extent they related to Edison's system rather than to general problems of reliability and service adequacy in New England as a whole. Specifically, the Commission directed an investigation of these questions and their effect on the proper rate for the service rendered.

The petition for review followed.

#### ARGUMENT

- I. THE COMMISSION WAS FULLY WARRANTED IN NOT REJECTING BOSTON EDISON'S INCREASED RATE FILING WITHOUT A HEARING
  - A. The Contentions That Boston Edison's New Rate Schedule Was Inconsistent With Antitrust Policies Were Not Sufficient to Permit Its Rejection Without a Hearing

The Towns contend (Br. pp. 23-37) that the Commission has an obligation to reject, without hearing, rate filings which violate public policy and that Edison's new rate schedule filing falls into this category because it contains certain provisions which the Towns allege are inconsistent with the policies of the antitrust laws. The Commission soundly concluded that such a summary disposition without any hearing was unwarranted and that the contentions and rejoinders presented matters that necessitated a hearing.

At the outset we note that under the Federal Power Act, rate changes are initiated by the regulated public utility.

After the statutory 30 days' notice and a suspension period, if any, not to exceed five months, the proposed rate schedule change becomes effective automatically without any approval by the Commission, unless prior to that time the Commission has determined, after hearing, that the new rate schedule is unjust, unreasonable or otherwise unlawful. Sections 205 and 206 of the Power Act, infra, pp. 31-33. If it could be shown that a proposed rate schedule is unauthorized or invalid as a matter of law so that an evidentiary hearing would serve no purpose (see, e.g., F.P.C. v. Texaco Inc., 377 U.S. 33 (1964); Citizens for Allegan County, Inc. v. F.P.C., 134 USAppDC 229, 414 F. 2d 1125 (1969)), the Commission would be in a position to disallow or reject such a filing summarily. But, contrary to petitioners' contentions (Br. pp. 23-37), there was no basis for such a summary rejection of Boston Edison's rate schedule because of the claimed inconsistencies with the antitrust laws.

As the Towns point out, the Commission, in carrying out its regulatory responsibilities must take into consideration the policies of the antitrust laws, as part of its overall assessment of the public interest. E.g., Northern Natural Gas Co. v. F.P.C., 130 USAppDC 220, 399 F. 2d 953 (1968); Municipal Electric Association of Massachusetts v. F.P.C., 134 USAppDC 310, 414 F. 2d 1206 (1969). But this cannot normally be done in a peremptory fashion without a hearing. Indeed, the Supreme Court has made it clear that summary procedures should be used sparingly in litigation involving alleged antitrust violations. See Poller v. Columbia Broadcasting System, 368 U.S. 464, 473 (1962);

Norfolk Monument Co., Inc. v. Woodlawn Memorial Gardens, Inc., 394

U.S. 700 (1969). Moreover, while the Commission must consider the policies of the antitrust laws, it does not enforce those laws as such and may indeed "approve actions which violate anti-trust policies where other economic, social and political considerations are found to be of overriding importance." Northern, supra, 130 USAppDC at 228, 399 F. 2d at 961. "In short," the Court continued (ibid.),

the antitrust laws are merely another tool which a regulatory agency employs to a greater or lesser degree to give "understandable content to the broad statutory concept of the 'public interest.'" F.M.C. v. Aktiebolaget Svenska Amerika Linien, supra, 390 U.S. at 244, 88 S.Ct. at 1009. But because competitive considerations are an important element of the "public interest," we believe that in a case such as this the Commission was obliged to make findings related to the pertinent antitrust policies, draw conclusions from the findings, and weigh these conclusions with other important public interest considerations. \* \* \*

It seems clear, moreover, that the Commission was fully warranted in concluding that the challenges presented by the Towns to certain provisions in Edison's new rate schedule did not permit peremptory disposition without affording the company a right to make an evidentiary presentation. The new rate schedule provisions objected to most strenuously by the Towns (Br. pp. 31-37) are those which impose a five-year or other reasonable notice requirement 4/ upon customers before they

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4/ The rate schedule notice requirement (R. 296) provides for five years' notice "or other notice reasonable in the circumstances as the Company and the Customer may agree." Since the rate schedule has no specific mechanism for resolving disagreements under the "other notice reasonable" provision, the Towns apparently construe the provision as having meaning only if there is mutual agreement although it might also be construed as contemplating resolution by the Commission if the parties fail to agree.

can purchase power from additional sources or install their own generating capacity (other than peaking units totaling no more than 20 percent of their annual peak load for which two years' notice would be required).

In their motion to reject filed with the Commission, the Towns recognized (R. 377) that Edison was entitled to some protection against sudden load increases or decreases but claimed that "five year notice is unnecessary - a substantially shorter time will do. \* \* \*" In its answer, Edison stated that the provision was needed to enable it to make sound planning decisions, that it takes 5 to 7 years to construct a large power plant, and that the unexpected loss of a load of the magnitude of the combined peak demand of the Towns would impose a substantial burden on Edison. It also stated that the rate schedule provides for reasonable notice and that the company "would hardly be in a position to insist on a five year period if a shorter period is reasonable" (R. 438). The conflicting assertions contained in the pleadings plainly raised fact questions as to the appropriate length of such notice provisions and indicated that an assessment of the reasonableness of Edison's rate schedule would involve factual information on such matters as Edison's past experience in installing new units, its rate of load growth, and its prospects for disposal elsewhere of capacity rendered temporarily superfluous by the action of a customer. Such information can be developed only in a hearing. The same kinds of fact questions arise concerning the exception to the 5-year notice requirement for peaking units of not over 20 per-

cent of the customer's annual peak load, which could be installed on only two years' notice, and as to the requirement limiting sales for resales without Edison's consent.

Thus, the Commission decision to submit these issues to hearing was well based, particularly since the appropriateness of some type of notice provision was conceded. For under its rate review authority under Sections 205 and 206 of the Power Act, the Commission, if it finds particular rate schedule provisions invalid, would then have to determine what substitute provision, if any, would be just and reasonable.

Inasmuch as the anticompetitive contentions raised by the Towns could not reasonably be disposed of on a summary basis without hearing, the cases relied upon by them (Br. pp. 24-26) for the proposition that the Commission has the power to reject filings are inapplicable. None of those cases required any factual or policy evaluations. Thus, in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956), the Court held that the Commission should have rejected an increased rate filing that was concededly precluded under the applicable rate contract. The only issue in the case was the legal question of whether the terms of a private rate contract could preclude a natural gas company from filing increased rates under Section 4 of the Natural Gas Act. It is clear, however, that where the contractual right to file a rate change requires a resolution of factual issues the Commission must conduct a hearing which may also involve rate level issues. Shell Oil Co. v. F.P.C., 334 F. 2d 1002, 1007 (CA3, 1964); City of

.Corinth v. F.P.C., 268 F. 2d 10 (CA5), certiorari denied, 361 U.S. 900 (1959).

The other cases cited by the Towns (Br. p. 26) as instances of the Commission's authority to reject filings also have no applicability here. They all involved situations where a filing was specifically precluded by an earlier Commission determination. In Amerada Petroleum Corp. v. F.P.C., 293 F. 2d 572 (CA10, 1961), certiorari denied, 368 U.S. 976 (1962), the rate increase filing rejected by the Commission was made while a previous increase was still under suspension and as such was barred by a provision of its regulations specifying that, during the suspension of a filing, the prior existing rate was not to be changed. Superior Oil Co. v. F.P.C., 322 F. 2d 601 (CA9, 1963), certiorari denied, 377 U.S. 922 (1964), and F.P.C. v. Texaco Inc., 377 U.S. 33 (1964), supra, both involved rejections of certificate applications on the basis of Commission regulations specifying that filings based on certain types of contract provisions, including those involved in those cases, would be rejected. Both courts upheld the rejection of the applications in question. As the Ninth Circuit expressed it (322 F. 2d at 605):

Under the existing regulations \* \* \* there being no request for an amendment, waiver or repeal thereof, and no contention that the rejected filings did not contain price-changing provisions proscribed thereunder, the Commission was required to summarily reject the filings without hearing. It follows that the only real issue presented on this review is the validity of the regulations pursuant to which summary rejection was ordered.

Plainly, therefore, neither Superior nor Texaco supports petitioners' position here. The provisions to which the Towns

object have never been found universally improper in a general rulemaking proceeding, as had the price-changing clauses in these cases. The difference, practical as well as theoretical, is clearly suggested by the Supreme Court's observation in Texaco (377 U.S. at 44) that

To require the Commission to proceed only on a case-by-case basis would require it, so long as its policy outlawed indefinite price-changing provisions, to repeat in hearing after hearing its conclusions that condemn all of them. \* \* \*

In F.P.C. v. Hunt, 376 U.S. 515 (1964) and the Permian Basin Area Rate Cases, 390 U.S. 747 (1968), upon which the Towns also rely, there was a question of the right of producers to file for increased rates in the face of a moratorium ordered by the Commission. Hunt involved a temporary certificate, conditioned to prohibit such filings while the permanent certificate proceeding was pending; in Permian, the moratorium was imposed as part of the order determining just and reasonable area rates. In both cases, the Court held that the Commission could validly impose a restriction on future increased rate filings.

The Towns' position that the Commission erred in not acting summarily without any hearing is not aided by the assertions in its brief to the Court that the provisions of the new rate schedule could jeopardize its opportunity, pending completion of a hearing, to purchase from new sources, although such factors may warrant expedited handling in the hearing. The Towns' brief (p. 31) states in particular that their participation in the Vermont Yankee Nuclear project might be jeopardized if

Edison insists on the maximum five-year notice under the new rate schedule because the participants' offer must be acted upon by October 27, 1970. This offer was apparently not even tendered until after the Commission's orders here were entered and hence was not called to the Commission's attention at that time. We may note, however, that the hearing examiner has ruled that the issues relating to the validity of various notice provisions in the new rate schedule should be severed from the other issues for separate and early disposition.

In summary, therefore, the Towns are clearly wrong in insisting that the antitrust issues raised by Edison's filing required the Commission to reject the filing summarily. If anything, those issues called for suspension and the institution of a hearing, the course which the Commission has followed.

B. The Commission Reasonably Concluded That the Data Filed By Edison Was In Substantial Compliance With the Commission's Regulations

The Towns argue further (Br. pp. 37-40) that the Edison filing should have been rejected because the company did not explicitly break down by functions its depreciation reserves and depreciation expenses. These figures are called for by Section 35.13(b)(4)(iv) of the Commission's Regulations which specifies that a rate increase filing under that section should be accompanied, inter alia, by Statements E 5/ and I 6/. Edison

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5/ Statement E - Accumulated depreciation. A statement of the accumulated provision for depreciation by functional classification as of the beginning and the end of the test period.

6/ Statement I - Depreciation expense. For the test period show depreciation expense by functional classification. The annual rates used in computing such expense and the method of determining such depreciation rates should also be shown.

submitted these statements but did not therein make the functional break down required.

At the outset it should be made clear that the Towns' discussion (Br. pp. 37-38) of the Commission's Uniform System of Accounts is irrelevant to the question whether the Edison filing complied with the Regulations as to treatment of depreciation. In particular, the statement that " \* \* \* data must be 'in the form prescribed by the Commission's Uniform System of Accounts . . . . ' 18 CFR §35.13" (Br. p. 38) has no application to Statements E and I. This requirement appears in the definition of certain other Statements that must be furnished (e.g., Statement A-Balance Sheet; Statement B-Income Statements) but is noticeably absent from Statements E and I. Instead, as noted above, these Statements are required to be rendered "by functional classification." The quoted words have a distinct meaning; thus, footnote 2 to Statement D reads:

Functional classification refers to the classification as among production, transmission, distribution, and general functions.

That is also the breakdown required in Statements E and I. There is simply no question of "compliance" with the Uniform System of Accounts.

The Company has not in the past functionalized depreciation items even for its own internal purposes.<sup>7/</sup> It was apparently

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<sup>7/</sup> Edison was in the process of functionalizing depreciation for 1969, as a result of a Commission compliance audit, at the time the rate filing was made. The journal entries functionalizing depreciation for 1969 were filed with the Commission on April 22, 1970, and were available to the public. The test year used in the cost study supporting the rate increase was 1968. A 1969 test year, with depreciation functionalized, is being used by Edison in the rate proceeding, which is in progress.

for that reason that it did not show functional classifications called for in Statements E and I. While this could have been done regardless of the Company's accounting method, the Towns' claim that Edison's failure to do so saddled them with "the heavy burden of developing themselves the functional allocations when all of the critical underlying data is under the control of Edison" (Br. p. 39) was reasonably not accepted as valid by the Commission. For the fact is that all the data needed to develop such allocations is easily available in the rate filing itself; nor is their derivation a difficult process, as we discuss below at pp. 18-19. Thus there was in fact, if not in form, adequate compliance with the filing regulations. The standard for rejection of a rate filing is set forth in Section 35.5 of the Commission's Regulations:

§35.5 rejection of material submitted for filing.

The Secretary, pursuant to the Commission's rules of practice and procedure and delegation of Commission authority, shall reject any material submitted for filing with the Commission which patently fails to substantially comply with the applicable requirements set forth in this part, or the Commission's rules of practice and procedure.  
[Emphasis added.]

Edison's filing was of course governed by this section.

Functionalized depreciation reserves can readily be developed by applying to the total depreciation reserves (R. 753) the percentages applicable to the comparable functions of depreciable plant. Functionalized depreciable plant can be derived from the company's study by subtracting non-depreciable items from the various functions of gross plant, shown by accounts on Statement

D (R. 751-752). The non-depreciable items are Land and Land Rights, shown by accounts on Statement D (R. 751-752), and Leased Property. 8/ Functionalized depreciation expense can be derived by applying 3 percent (the figure which results from the company's depreciation practice (R. 765, 782) to each function of depreciable plant (derived above). 9/

It seems clear, therefore, that the divergences from strict compliance with the Regulations did not supply any reason for rejecting the Edison filing. Edison substantially complied with the applicable requirements, and as we have demonstrated, its filing was sufficient to allow the information not given directly to be derived with reasonable accuracy. No more was necessary to enable the Commission to decide intelligently the question of suspension. The purpose of the filing as such, it should be recalled, is primarily to enable the Commission to determine whether there should be suspension and hearing. It is neither

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8/ The only point at which the Towns would have had to resort to estimation is in conjunction with a small Leased Property item not shown in Statement D. The annual amortization for this item amounts to some \$44,284 (1968) (reported by Edison in its FPC Form No. 1 - a document available to the public in the Commission's offices). This insignificant item would not have distorted the result reached sufficiently to require rejection of the filing.

9/ Such functionalization based on gross plant was implicit in Edison's cost of service submittal in support of its rate filing. But the results of this procedure might not be identical with the functionalization subsequently adopted by Edison after an in depth review of the functionalization concept as applied to the company's total book reserve for depreciation.

required nor designed to make possible, without more, the determination of just and reasonable rates.

C. The Towns' Allegations of Inadequate Service Not Only Did Not Require Rejection, But Were Dealt With By the Commission in the Only Proper Way

The Towns also claim that Edison's increased rate filing should have been rejected, without hearing, on the ground that they have been receiving, and expect to receive in the future, less than a normal utility grade of service from the company (Br. pp. 40-46). There is, however, no justification for the position that because of admitted difficulties in bulk power supply, the Edison filing should be rejected out of hand.

It is as clear here, as it is in the case of the Towns' antitrust contentions, that a hearing is required to arrive at a proper resolution of the service question. The nature, extent, and cause of the power supply difficulties have not been determined. These issues must be resolved after hearing, since they necessarily involve factual evaluations. For example, there is an issue as to the responsibility for the voltage reductions that have taken place. The Towns assign the responsibility to Edison, whereas Edison asserts that they are part of a regional problem which Edison, by reducing voltage occasionally, has been doing its part to solve (R. 550-551, 598, 599-602). Such factual issues will be taken up in the hearing prescribed by the Commission in its second order of June 26, 1970 (R. 738-742). In that hearing it will also be possible to determine, as the Commission directed in its order, "whether the quality and adequacy of electric service rendered by Edison to its wholesale customers may affect

the lawful rates to be charged for such service" (R. 742) and if so, to what extent.

To reject the filing on service grounds without evaluation of this question would be tantamount to prejudgment of the quality-of-service issue. For, assuming arguendo that it would be found as a result of the hearing that Edison was otherwise entitled to some increase in its wholesale rates, refusal to consider any increased rate filing absent improvement in service would amount to an ex parte determination that Edison must be penalized for its bulk power supply difficulties. Here, as in the case of the antitrust allegations discussed at pp. 9-16 above, the Towns have confused the making of allegations which require a hearing with a showing that the increased rate filing may not lawfully be considered (i.e., that it must be rejected summarily without hearing). Consequently, while the service issues have a place (which the Commission has duly recognized) in the hearing, they do not provide grounds for summary rejection of the filing.

## II. THE COMMISSION'S SUSPENSION ORDER IS NOT REVIEWABLE

The petitioning Towns, as well as the amici, also challenge the Commission's determination that Edison's changed rates were not suspended for the maximum five-months period but only for one day. They would have this Court substitute its judgment for that of the Commission by ordering a five-months' suspension.

While we will subsequently show that the claims that the one-day suspension constituted a discriminatory departure from an allegedly established administrative practice are unwarranted,

our basic view is that those contentions may not properly be considered by this Court. For the law is well-established that the exercise of a federal regulatory agency's discretion with respect to suspending a rate change is not reviewable. 10/ E.g., Arrow Transportation Co. v. Southern Ry., 372 U.S. 658, 670 (1963); National Industrial Traffic League v. United States, 287 F. Supp. 129 (D.D.C.--three-judge, 1968); Movers' and Warehousemens' Association v. United States, 227 F. Supp. 249 (D.D.C.--three judge, 1964); Bison Steamship Corp. v. United States, 182 F. Supp. 63 (N.D. Ohio--three-judge, 1960); Luckenbach Steamship Co. v. United States, 179 F. Supp. 605 (D. Del.--three-judge, 1959), suspension issue vacated as moot, 364 U.S. 280 (1960); National Water Carriers Association v. United States, 126 F. Supp. 87 (S.D.N.Y.--three-judge, 1954); Carlsen v. United States, 107 F. Supp. 398 (S.D.N.Y.--three-judge, 1952).

The cases show that the basis for this rule is that otherwise the courts would be exercising administrative functions entrusted by Congress to the agencies. See, e.g., National Industrial Traffic League, supra, 287 F. Supp. at 132; Luckenbach Steamship Co., supra, 179 F. Supp. at 610. Indeed, it was to foreclose such judicial actions through issuance of injunctions that the Interstate Commerce Commission was vested with its suspension authority. Arrow Transportation Co., supra, 372 U.S. at 667-668. While petitioners accurately point out

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10/ As Boston Gas Points out (Br. p. 9), suspension orders may be reviewed to the extent they make definitive legal determinations, as for example, that a rate filing is not contractually barred.

that the precise issue in Arrow Transportation Co., supra, was the power of the courts, under their equitable powers, to extend the suspension period that this statute authorized the Interstate Commerce Commission to impose, the Court in Arrow concluded that Congress had intended "to foreclose a judicial power to interfere with the timing of rate changes" [Emphasis in original.] (372 U.S. at 668). The Towns' attempt to differentiate (Br. p. 53, n. 23) the cases holding refusals to suspend non-reviewable for that reason alone ignores that review of any exercise of the Commission's discretion with respect to suspension would constitute judicial interference with the timing of a rate change.

The suggestion of Boston Gas in its amicus brief (p. 10) that there should be less judicial restraint to review decisions of the Power Commission because there is no opportunity for reparations under the Federal Power or Natural Gas Acts, such as exists under the Interstate Commerce Act, is not generally sound and certainly irrelevant here. In the first place, the doctrine of non-reviewability has been applied in motor carrier, as well as railroad, cases (National Industrial Traffic League, supra; Carlsen, supra), although neither refunds nor reparation could be ordered with respect to motor carrier rates. T.I.M.E. Inc. v. United States, 359 U.S. 464 (1959). Moreover, it is apparent that the purpose of the one-day suspension (instead of no suspension) was simply to assure the Commission's authority to order refunds as a result of its rate investigation, just as the Interstate Commerce Commission may clearly do in rail and water carrier cases without even a nominal suspension.

For the Commission's authority to order Section 205(e) refunds may depend not only on its power to suspend a rate (see Gas Service Co. v. F.P.C., 108 USAppDC 334, 282 F. 2d 496 (1960)), but also on the exercise of that authority. See Mobile Gas Service Corp., 12 FPC 1422, 1424 (1953), reversed on other grounds sub nom. Mobile Gas Service Corp. v. F.P.C., 215 F. 2d 883 (CA3, 1954), affirmed sub nom. United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956).

The Towns' reliance (Br. pp. 51-53) on Amarillo-Borger Express, Inc. v. United States, 138 F. Supp. 411 (N.D. Tex.--three-judge, 1956) vacated as moot, 352 U.S. 1028 (1957) and a number of cases following it, <sup>11/</sup> is misplaced. In those cases, the courts, while recognizing the non-reviewability of the agency's initial exercise of its discretion, held reviewable Interstate Commerce Commission orders vacating prior suspension orders on the grounds that the reason for the change of mind resulting in the vacating orders had not been adequately explained. The present case is plainly different since what is sought to be reviewed is the initial exercise of the Commission's discretion. It should be added that Amarillo-Borger and its progeny have been found unpersuasive in several more recent cases refusing to review similar orders vacating suspensions. Oscar Mayer and Co. v. United States, 268 F. Supp. 977 (W.D. Wis.--three-judge, 1967); Freeport Sulphur Co. v. United

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<sup>11/</sup> Long Island R.R. v. United States, 140 F. Supp. 823 (E.D. N.Y.--three-judge, 1956); Dixie Carriers, Inc. v. United States, 143 F. Supp. 844 (S.D. Tex.--three-judge, 1956), vacated as moot sub nom. Atchison, Topeka & Sante Fe Railroad Co., et al. v. Dixie Carriers, Inc., et al., 355 U.S. 179 (1957).

States, 199 F. Supp. 913 (S.D.N.Y.--three judge, 1961). 12/

While under the statute it seems clear that the Commission is intended to make ad hoc determinations as to whether rate changes should be suspended and for what period, petitioners and amici claim that suspension for less than the maximum five months period constituted an abuse of discretion primarily on the ground that the Commission departed from an allegedly established practice of suspending for five months absent extenuating circumstances. But the basic predicate for this claim is simply not valid in the context of electric rate increases. As a matter of fact, in the past ten years there have been only thirteen electric rate increase proposals that have been suspended by the Commission. Of these, nine were suspended for five months and four for one day. During the period July 1, 1964 to date, there have been twenty-eight electric rate increases accepted for filing without suspension. 13/ During that period there were six five-months suspensions and three one-day suspensions. This certainly cannot be characterized as an "established administrative practice."

Moreover, the one-day suspension here is comparable to the one-day suspension in Utah Power & Light Co., 30 FPC 885 (1963), and the one-day suspension with respect to an earlier Boston Edison increase, notwithstanding Boston Gas' efforts (Br. p. 3,

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12/ In Atlantic Coast Line R.R. v. United States, 173 F. Supp. 871 (E.D. Va.--three-judge 1958), to which the amicus brief of Boston Gas refers, a vacating order was set aside on the ground that the I.C.C. in that case had not followed a permissible procedure by issuing its second order without affording interested parties an opportunity to be heard.

13/ Excluding eight nominal rate increases amounting to less than \$1,000.

n.) to distinguish the cases. As Boston Gas points out, in both of those situations the new rates had the effect of reducing disparities in rates among the utility's customers. 14/ The present rate increase filing was intended to achieve a comparable result, for according to the company's filing its wholesale customers taking at 14 Kv (both municipal and investor owned utilities) were contributing a disproportionately low portion of the company's earnings at the existing rates (R. 782, 824). The new rates were designed to equalize the contribution to earnings by various loads (R. 823). 15/ It should be noted

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14/ The Commission did not, however, express its basis for these one-day only suspensions. Subsequently, one of the Commissioners indicated his view that, in Utah, supra, the reason was a showing that there had been a reasonable likelihood that the increase was required. See Florida Gas Transmission Co., 34 FPC 995, 998 (Commissioner Ross, dissenting) (1965).

15/ The company's earnings (using normalization for liberalized depreciation) with respect to the sales covered by the rates here at issue were broken down at existing rates as follows (R. 824):

Sales to Municipalities at 14 Kv: (Petitioners, Norwood, Concord, and Wellesley)	3.4% return
Sales to private utilities at 14 Kv: (Boston Gas)	5.17%
Sales to private utilities at 115 Kv: (New England Power Co.)	6.9%
Overall	4.4%

Under the new rate schedule Edison projected the earnings as follows (R. 823):

Sales to Municipalities at 14 Kv:	6.12%
Sales to Private at 14 Kv:	7.50%
Sales to Private at 115 Kv:	6.83%
Overall	6.74%

that even if the overall revenues are determined to be excessive, the one-day suspension will permit any refunds to be distributed in accordance with the new allocation if that is appropriate and thereby prevent any customer from contributing an excessive share of the earnings (whatever the proper level) for that period.

The Towns also suggest (Br. p. 56) that the Commission's one-day suspension departed from a supposed norm because the Commission suspended a number of other recent electric rate increases for five months where the percentage increases in the rates were less than here. But in so doing they ignore the fact that the rates sought in those cases would have resulted in higher rates of return than the 6.74 percent sought by Edison. In Wisconsin Electric Power Co., Docket No. E-7546, issued July 21, 1970 (not yet reported), the proposed rates were to result in a 7.5 percent return, while in Union Electric Co., Docket No. E-7525, issued February 19, 1970 (not yet reported), the proposed rates were designed to yield a 7.47 percent return. Absent a rigid policy of suspending for five months all electric rate increases (which, as we have shown, has not existed), there is certainly no presumption that each of these cases--based on different requests for earnings, different allocation problems, and different presentations---should necessarily have been treated identically by the Commission. Cf. F.C.C. v. WOKO, Inc., 329 U.S. 223 (1946).

III. THE COMMISSION DID NOT ERR IN WAIVING THE REQUIREMENT FOR FILING SUPPORTING DATA 60 DAYS PRIOR TO THE EFFECTIVE DATE OF A CHANGED RATE

The Towns and the amici claim that the Commission committed reversible error in not delaying the effective date of the rate schedules until at least May 31, 1970 (60 days after completion of the filing), because of the provisions of Section 35.13(b)(4)(i) of its Regulations. Infra, p. 35. That position is also without merit.

Section 35.13 (b)(4)(i) of the Regulations provides that 60 days before a rate increase is proposed to become effective the filing utility shall submit to the Commission supporting cost data (described in detail in Statements A through O of that section), sales and revenue data (described in Section 35.13(b)(1)) and a summary statement of the proposed increased rate. The rate schedule is not required to be submitted at this time. The rate schedule and other information required under Section 35.13(a) and (b)(2) and (b)(3) of the Regulations, infra, p. 35, must be filed with the Commission and mailed to the customers and State regulatory commissions not less than 30 days prior to the proposed effective date (Section 35.3 of the Regulations, infra, p. 34). There is no requirement that the public be apprised of the supporting cost data until that time. 16/ The 60-day filing requirement for cost data is therefore not a public-notice provision, contrary to the Towns' claim (Br. p. 63). It is merely a requirement that certain detailed cost data be submitted to the Commission in advance of a rate schedule filing in order to

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16/ The data is available to the public once filed.

permit the "expeditious processing of rate schedule filings by the Commission." Order No. 271, 30 FPC 850, at 851 (1963).

Since the only requirements for notice to the customers and the public are the 30-day provisions in Section 35.2 and 35.3 of the Regulations, infra, p. 34, and since the filing was completed on March 30, 1970, so that the May 1, 1970 effective date conformed with this requirement, the Commission was fully warranted in treating the request for an effective date 30 days after completion of the filing as encompassing a request for a waiver of the 60-day requirement. While the request did not make specific reference to Section 1.7 of the Rules of Practice and Procedure, which authorizes requests for waivers, the reason and purpose for the request and the company's interest were apparent--which is in substance all that Section 1.7 calls for.

Moreover, since the 60-day period specified in the Regulations was designed solely to afford the Commission's staff additional time, beyond the 30-day public notice period, in which to process rate increase applications, the considerations pertinent to waiver of this period (where the 30-day period was not involved) related peculiarly to internal Commission operations. The claim of Boston Gas in its amicus brief (p. 7) that "the Commission may not, without following the procedures specified in its Rules of Practice and Procedure, waive other portions of its rules to the detriment of an interested party" must be judged in this context.

It should also be noted that the Commission's Regulations set out the rights of an interested party (Section 35.8) and

it is clear that the Commission's waiver in no way affected those rights. Section 35.8 of the Regulations provides that comments of any interested party concerning a rate schedule filing shall be made within 20 days after the date of such rate schedule filing. The Commission's order was not issued until 29 days following completion of the filing, and in that order it gave consideration to all comments which were timely filed. Thus, neither Boston Gas nor any other customer was in any way aggrieved by the Commission's waiver of the 60-day provision of its Regulations.

#### CONCLUSION

For these reasons, the order of the Commission should be affirmed to the extent it is reviewable.

Respectfully submitted,

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## APPENDIX

### STATUTES INVOLVED

Section 205, 16 U.S.C. 824d and Section 206, 16 U.S.C. 824e, of the Federal Power Act, provides:

#### RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

SEC. 205. (a) All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charges, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for

by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of such five months, the proposed change of rate, charge, classification, or service shall go into effect at the end of such period, but in case of a proposed increased rate or charge, the Commission may by order require the interested public utility or public utilities to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require such public utility or public utilities to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [49 Stat. 851; 16 U.S.C. 824d]

**FIXING RATES AND CHARGES; DETERMINATION OF COST  
OF PRODUCTION OR TRANSPORTATION**

SEC. 206. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

(b) The Commission upon its own motion, or upon the request of any State commission whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no authority to establish a rate governing the sale of such energy. [49 Stat. 852; 16 U.S.C. 824e]

Sections 35.2(c), 35.2(d), 35.2(e), 35.3, 35.5, 35.8,  
35.13, 18 C.F.R. 35.2(c), 35.2(d), 35.2(e), 35.3, 35.8,  
35.13, of the Regulations under the Federal Power Act  
provides:

§ 35.2 Definitions.

\* \* \* \*

(c) *Filing date*. The term "filing date" as used herein shall mean the date on which a rate schedule filing is completed by the receipt in the office of the Secretary of all supporting cost and other data required to be filed in compliance with the requirements of this part, unless such rate schedule is rejected as provided in § 35.5. If the material submitted is found to be incomplete, the Secretary will so notify the filing utility within 30 days of the receipt of the submittal.

(d) *Posting*. The term "posting" as used herein shall mean, (1) keeping a copy of every rate schedule of a public utility as currently on file, or as tendered for filing, with the Commission open and available during regular business hours for public inspection in a convenient form and place at the public utility's principal and district or division offices in the territory served, and (2) mailing to each purchaser under a rate schedule a copy of such rate schedule on the date it is sent to this Commission for filing. Posting shall include, in the event of the filing of increased rates or charges, the mailing to each purchaser under a rate schedule or schedules proposed to be changed and to each State Commission within whose jurisdiction such purchaser or purchasers distribute and sell electric energy at retail, a copy of the rate schedule showing such increased rates or charges, comparative billing data as required under this part, and, if requested by a purchaser or State Commission, a copy of the supporting data required to be submitted to this Commission under this part. Upon direction of the Secretary, the public utility shall serve copies of rate schedules and supplementary data upon designated parties other than those specified herein.

(e) *Effective date*. As used herein the "effective date" of a rate schedule shall mean the date on which a rate schedule filed and posted pursuant to the requirements of this part is permitted by the Commission to become effective as a filed rate schedule. The effective date shall be 30 days after the filing date, or such other date as may be specified by the Commission.

§ 35.3 Notice requirements.

(a) All rate schedules or any part thereof shall be tendered for filing with the Commission and posted not less than thirty days nor more than ninety days prior to the date on which the electric service is to commence and become effective under an initial rate schedule or the date on which the filing party proposes to make any change in electric service and/or rate, charge, classification, practice, rule, regulation or contract effective as a change in rate schedule, except as provided in paragraph (b) of this section, or unless a different period of time is permitted by the Commission. Nothing herein shall be construed as in any way precluding a public utility from entering into agreements which, under this section, may not be filed at the time of execution thereof by reason of the aforementioned 30 to 90 day prior filing requirements. The proposed effective date of any rate schedule filing having a "filing date" in accordance with § 35.2(c) may be deferred at the written request of the filing public utility submitted to the Secretary prior to its acceptance by the Commission.

(b) Rate schedules predicated on the construction of facilities may be tendered for filing and posted no more than 90 days prior to the date set by the parties for the contract to go into effect.

The Commission, upon request and for good cause shown, may permit a rate schedule or part thereof to be tendered for filing and posted more than 90 days before it is to become effective.

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§ 35.5 Rejection of material submitted for filing.

The Secretary, pursuant to the Commission's rules of practice and procedure and delegation of Commission authority, shall reject any material submitted for filing with the Commission which patently fails to substantially comply with the applicable requirements set forth in this part, or the Commission's rules of practice and procedure.

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**§ 35.8 Comments by interested parties.**

Comments of any purchaser or other interested party concerning any rate schedule filing made pursuant to this part shall be submitted to the Commission within 20 days after the date of such rate schedule filing. This section shall not limit any opportunity to submit protests, complaints, notices of intervention, and petitions to intervene in accordance with the Commission's rules of practice and procedure.

\* \* \* \* \*

**§ 35.13 Filing of changes in rate schedules.**

(a) The letter of a public utility transmitting to the Commission for filing a rate schedule, or part thereof, to supersede, supplement or otherwise change the provisions of a rate schedule required to be on file with the Commission, shall list the documents submitted with the filing; give the date on which the filing public utility proposes to make the changes in service and/or rate, charge, classification, rule, regulation, practice or contract effective; state the names and addresses of those to whom copies of the rate schedule has been mailed; include a brief description of the proposed changes in service and/or rate, charges, etc.; state the reasons for the proposed changes; and summarize the circumstances which show that all requisite agreement to the rate schedule or the filing thereof, including any contract embodied therein, has in fact been obtained. In the case of coordination and interchange arrangements in the nature of power pooling transactions, all supporting data required to be submitted in support of a rate schedule filing shall also be submitted by parties filing certificates of concurrence, or a representative to file supporting data on behalf of all parties may be designated as provided in § 35.1.

(b) In addition the following material shall be submitted:

(1) A statement comparing sales and services and revenues therefrom, by months and for the year, under both the rate schedule proposed to be superseded or supplemented and the proposed changed rate schedule, each applied to

the transactions for the 12 months immediately preceding and to the 12 months immediately succeeding the date on which the new rate schedule is to become effective. Such comparisons should be made for each class of service, for each customer, and for each delivery point. The billing quantities involved in the computation of the charges should also be shown.

(2) A comparison of the proposed rate with other rates of the filing public utility for similar wholesale for resale and transmission services.

(3) If any facilities are installed or modified in order to supply the service to be furnished under the proposed rate schedule, the filing public utility shall show on an appropriate available map (or sketch) and single line diagram the additions or changes to be made.

(4) (1) Except as provided in subdivision (ii) of this subparagraph, if the rate schedule provides for an increased rate, then 60 days prior to the date that such changed rate is proposed to become effective the filing public utility shall submit a statement showing its cost of the service to be supplied under the new rate schedule according to supporting statements A through O as described below. Simultaneously, the public utility shall submit the material on sales and revenues described in paragraph (a) of this section and, unless the rate schedule containing the proposed increased rate is likewise simultaneously filed, a summary statement of such proposed increased rate. Provided, however, that the submittal of such summary statement of the rate schedule shall not be in lieu of the rate schedule as required to be filed with the Commission pursuant to the regulations in this part.

(ii) No cost of service data shall be required in cases where the application of the proposed change in rate schedule effects rate increases of less than \$50,000 annually resulting from, but incidental to, changes such as a rate design, delivery points and delivery voltage. Specifically designed rate increases of less than \$50,000 annually (as opposed to incidental increases), increases resulting from changes made in fuel clauses, and increases of rates comprising an integral part of coordination and interchange arrangements in the nature of power pooling transactions, shall be supported by cost data as identified in § 35.13(b)(2).

(iii) The statement of the cost of service should contain an analysis of system costs for a test period of twelve consecutive months including return, taxes, depreciation, and operating expenses, and an allocation of such costs to the services rendered. The information submitted with the statement shall show the data itemized below for the test period, together with any significant changes in facilities, operations, or costs experience during that period, or which are known and are measurable with reasonable accuracy at the time of the filing, and which will become effective within eight months of the last month of available actual experience. Pursuant to application of the filing public utility made at the time of filing of a rate schedule, the Secretary may allow deviations from the data herein required.

(iv) The statement of cost of service shall include an attestation by the chief accounting officer or other authorized accounting representative of the filing public utility that the cost statements and supporting data submitted as a part of the filing which purport to reflect the books of the public utility do, in fact, set forth the results shown by such books. Following is a description of statements A through O required to be filed pursuant to this subparagraph.

**Statement A—Balance sheet.** Balance sheets in the form prescribed by the Commission's Uniform System of Accounts for Public Utilities and Licensees as of the beginning and the end of the test period, and the most recently available balance sheet, including therein the footnotes, if any, applicable thereto.

**Statement B—Income statements.** Income statements in the form prescribed by the Commission's Uniform System of Accounts for Public Utilities and Licensees for the test period, and the most recently available income statement, including therein footnotes, if any, applicable thereto.

**Statement C—Earned surplus statement.** Earned surplus statements for the test period, showing debits and credits according to descriptive captions, the balance as of the beginning and the end of the test period, and the most recently available earned surplus statement, including therein the footnotes, if any, applicable thereto.

**Statement D—Cost of plant.** A statement of the cost of plant by functional classification<sup>2</sup> as of the beginning and the end of the test period.

**Statement E—Accumulated depreciation.** A statement of the accumulated provision for depreciation by functional classification as of the beginning and the end of the test period.

**Statement F—Average working capital.** A statement, by components, of the claimed working capital using averages of the amounts as of the beginning and the end of each month of the test period.

**Statement G—Rate of return.** Show the percentage rate of return claimed, with a brief statement of the basis therefor. Additionally, the following data should be furnished:<sup>3</sup>

(a) **Debt capital.** Show for each class and series of long-term debt outstanding as of the date of the most recently available balance sheet:

(1) Net proceeds.

(2) Net proceeds per unit.

(3) Cost of money and yield to maturity based on the interest rate and net proceeds per unit outstanding determined by reference to any generally accepted table of bond yields.

(4) Show weighted average cost of debt capital as determined from the foregoing detail.

(b) **Preferred stock capital.** Show for each class and series of preferred stock outstanding as of the date of the most recently available balance sheet:

(1) Net proceeds.

(2) Net proceeds per unit or share.

(3) Cost of money. Dividend rate divided by net proceeds per unit or share.

(4) Show weighted average cost of preferred stock capital as determined from the foregoing detail.

<sup>2</sup> Functional classification refers to the classification as among production, transmission, distribution, and general functions.

<sup>3</sup> Where fifty percent or more of the common stock of the public utility is not held by the public but is owned by another corporation, the information required by this section in respect of debt capital and preferred stock capital shall be submitted to the extent applicable, and in addition the data described shall be submitted with respect to the debt, preferred stock and common stock of the parent company.

(c) Common stock capital. Show for each sale of common stock during the five-year period preceding the date of the most recently available balance sheet:

- (1) Net proceeds.
- (2) Net proceeds per share.
- (3) Book value per share at date immediately prior to date of issuance.

(4) Latest published earnings per share at date of issuance.

(5) Dividend rate at date of issuance.

(6) The following information on outstanding common stock for each of the five calendar years preceding the date of the most recently available balance sheet:

Years	Average number of shares outstanding	Book value (per share)	Annual earnings (per share)	Annual dividend (rate per share)	Dividends (percent earnings)	Average market price, basis monthly, high-low	Earnings price ratio <sup>1</sup>	Dividend price ratio <sup>2</sup>
1.....								
2.....								
3.....								
4.....								
5.....								

<sup>1</sup> Relationship of annual earnings per share to average of the 12 monthly high-low market values of stock. In the case of monthly data, use latest reported earnings in computing ratio of earnings to average high-low market value for month.

<sup>2</sup> Relationship of dividend per share to average high-low market value of stock.

Statement H—Operating expenses. For the test period show operating expenses by functional classification.

Statement I—Depreciation expense. For the test period show depreciation expense by functional classification. The annual rates used in computing such expense and the method of determining such depreciation rates should also be shown.

Statement J—Income taxes. For the test period show income taxes computed on the basis of the rate of return claimed and separated as between Federal and State taxes; the principal components of the tax adjustments shall be described and the amounts thereof shown separately. Amounts for deferred taxes debit and credit should be shown. There also should be shown the amounts and basis of assignment of income taxes attributed to other utility departments and nonutility operations together with any tax savings affecting the total tax liability. If the filing public utility joins in a consolidated tax return, there shall be given the total estimated tax savings, expressed as a percentage, resulting from the filing of a consolidated return, as well as a full explanation of the method of computing the tax savings. Any abnormalities (such as non-recurring income, gains, losses, deductions, etc.) affecting the income tax for the test period shall be explained and the tax effect thereon set forth.

Statement K—Other taxes. For the test period other taxes shall be classified under appropriate headings of Federal, State and local with appropriate subclassifications.

Statement L—Over-all cost of service. For the test period show the over-all cost of service for the filing public utility's electric utility operations during the test period, including allowances for return and income taxes based upon the rate of return claimed.

together with the total electric utility operating revenues of the filing public utility for the test period. If the amount of the filing public utility's total electric utility operating revenue differs significantly from its overall cost of service including allowances for claimed return and income taxes, the filing public utility shall show the amounts available for return and taxes on income and return expressed as a percentage of rate base.

Statement M—Allocated cost of service. For the test period show the cost of service allocated to the sales or services for which the increased rate or charge is proposed, including the principal determinants used for allocation purposes. In connection therewith, the following data should be submitted:

(1) In the event the filing public utility considers certain special facilities as being devoted entirely to the service involved, it shall show, in addition to the over-all cost of service, the cost of service related to such special facilities.

(2) Computations showing the energy responsibility of the service, based upon considerations of energy sales under the proposed rate schedules and the kwh delivered from the filing public utility's supply system.

(3) Computations showing the demand responsibility of the service, based upon considerations of the monthly maximum demands supplied from the seller's system, the maximum demands of the service under the proposed rate schedules, and the demands of the service at the time of the maximum system demand. Such non-coincident and coincident demand data, including date and hour for the system and for the service, should be shown for each month of the test period together with a statement explaining how the demand ratio used in the filing party's cost study was derived.

(4) Estimated peak hour and annual energy losses applicable to sales under the proposed rate schedule expressed as a percentage of system output.

Statement N—Comparison of cost of service. For the test period compare the allocated cost of service shown in Statement L above with revenues under the proposed rates. If the amount of revenue under the proposed new rates differs significantly from allocated cost of service including allowances for claimed return and income taxes, the filing public utility shall show the amounts available for return and taxes on income, and shall show return expressed as a percentage of rate base allocated to the service concerned.

(1) In the event the filing public utility considers certain special facilities as being devoted entirely to the service involved, it shall show, in addition to the over-all cost of service, the cost of service related to such special facilities.

Statement O—Fuel cost adjustment factor. If the rate schedule embodies a fuel clause, show the derivation of the fuel cost adjustment factor as stated therein.

(c) If a rate schedule required to be on file with this Commission is not required to be supported by cost of service data as set forth in this section but such data may be needed for Commission analysis, these regulations contemplate that each filing public utility may be required, by letter of the Secretary, to submit specified cost data.

(d) Filing public utilities in completing the supporting cost of service data herein required should be guided by applicable Commission precedents and policy statements considered in the light of their respective operating conditions and sales and services subject to this Commission's regulatory jurisdiction.

### Section 1.7(b) of Federal Power Commission Rules of Practice and Procedure provides:

#### § 1.7 Petitions.

\* \* \* \* \*

(b) For issuance, amendment, waiver or repeal of rules. A petition for the issuance, amendment, waiver, or repeal of a rule by the Commission shall set forth clearly and concisely petitioner's interest in the subject matter, the specific rule, amendment, waiver, or repeal requested, and cite by appropriate reference the statutory provision or other authority therefor. If a rate filing is accompanied by a request for waiver pursuant to this section the thirty-day notice period provided in section 4(d)

of the Natural Gas Act and section 205(d) of the Federal Power Act shall begin to run if and when the Commission grants the request. Such petition shall set forth the purpose of, and the facts claimed to constitute the grounds requiring, such rule, amendment, waiver, or repeal, and shall conform to the requirements of §§ 1.15 and 1.16. Petitions for the issuance or amendment of a rule shall incorporate the proposed rule or amendment.



IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24450

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MUNICIPL LIGHT BOARDS OF  
READING AND WAKEFIELD, MASSACHUSETTS,  
Petitioners

v.

FEDERAL POWER COMMISSION  
Respondent

---

ON PETITION FOR REVIEW OF ORDERS OF  
FEDERAL POWER COMMISSION

---

BRIEF FOR INTERVENOR  
BOSTON EDISON COMPANY

---

United States Court of Appeals

FILED

*Matthew J. Liberman*  
CLERK

THOMAS M. DEBEVOISE  
GEORGE F. BRUDER  
Debevoise & Liberman  
745 Shoreham Building  
Washington, D. C. 20005

October 16, 1970

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In The  
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No. 24450

MUNICIPAL LIGHT BOARDS OF  
READING AND WAKEFIELD, MASSACHUSETTS,  
Petitioners

v.

FEDERAL POWER COMMISSION  
Respondent

On Petition for Review of Orders of  
the Federal Power Commission

BRIEF FOR INTERVENOR  
BOSTON EDISON COMPANY

The pending case has not been previously before this  
Court.

ISSUES PRESENTED

1. Whether the FPC was correct in assigning a "filing date" to Boston Edison's application for increased rate where the application was completed, instead of rejecting the application.
2. Whether the FPC abused its discretion in assigning an "effective date" for the new rates, thirty-one days after the "filing date", following a one-day suspension period which enables the Commission to later order refunds if found appropriate after decision on the merits.

#### STATEMENT OF THE CASE

The few procedural facts necessary to decision are mentioned in the briefs already submitted and are referred to here in the Argument in conjunction with the applicable Federal Power Commission Rules and Regulations.

#### SUMMARY OF ARGUMENT

Edison, an intervenor here supporting the Federal Power Commission Orders, submits that the Commission's procedure of accepting Edison's Rate S-1 for filing, suspending it, and fixing hearing with provision for refund is patently sound. It protects the interests of Petitioners and the Amici Curiae, all of whom are Rate S-1 customers, and is fair to the company. Summary rejection of the Rate S-1 filing on the basis of factually disputed contentions would have been clearly erroneous and contrary to law. The decision as to the suspension period was a proper exercise of judgment in an area peculiarly entrusted to the Commission's discretion.

#### ARGUMENT

##### I

###### APPELLATE COURTS SHOULD NOT BE REQUESTED TO BE THE INITIAL TRIER OF A FACTUAL DISPUTE

The Petitioners seek appellate review of a rate case while it is at an interlocutory stage at the Federal Power Commission, prior to the completion of the evidentiary hearing which is now in progress. They also raise the spector of antitrust in connection with the notice provision of Rate S-1

("Five years' notice . . . or other notice reasonable in the circumstances . . ."), while admitting that "[o]bviously, Edison is entitled to some protection from sudden increase or decreases in load by its resale customers. . . ." (R. 346-408, Pet. Notice to Reject at 29). They allege that Edison's service is poor. These are obviously factual issues. They present a number of contentions which turn on factual issues. The Federal Power Commission should be given the opportunity to address itself to these matters, hear the evidence and make its findings prior to consideration by this Court.

Factual disputes clearly are not for de novo resolution by an appellate court. The Federal Power Act provides that "The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." Sec. 313(b), 16 U.S.C. 8251. As this Court noted in Deutsch v. United States Atomic Energy Commission, 130 U.S. App. D.C. 339, 342; 401 F2d 404, 407 (1968).

It is well settled that the fact-finding function is within the exclusive province of the administrative agency. We appear unable to establish a substantial recognition at the Bar that "[t]he judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." Rochester Telephone Corp. v. United States, 307 U.S. 125 at 146 . . . (Footnote with numerous citations omitted).

For a recent discussion of this doctrine by the United States Supreme Court, see McKart v. United States, 395 U.S. 185, 193-195 (1969).

The Petitioners urge that Edison's rate S-1 filing should

have been rejected because of their allegation of antitrust and poor service. The Secretary pursuant to section 35.5 of the Commission's regulations (18 C.F.R. §35.5) must reject a rate filing submission under the following standard:

The Secretary, pursuant to the Commission's rules of practice and procedure and delegation of Commission authority, shall reject any material submitted for filing with the Commission which patently fails to substantially comply with the applicable requirements set forth in this part, or the Commission's rules of practice and procedure. (Emphasis added.)

There is nothing in the regulations which provides for the rejection of a rate filing on the basis of objections to its merits. The Commission's delegation of responsibility for rejection of rate filings to the Secretary creates the mechanism that is intended to preserve adequate standards of technical compliance with the Commission's filing requirements and not as a device for short circuiting procedural mechanisms to resolve factual issues as to the merits of the filing.

The factual issues raised by Petitioners are currently the subject of a public hearing ordered by the Commission. The issues being aired are those raised by the Petitioners in their brief submitted to this Court. In their view, their allegations made before the Commission regarding antitrust and reliability of service should have been reason enough for the Commission to summarily reject Edison's filing without a hearing. The hearing now taking place will allow the Commission to develop and interpret those issues. The hearing is also affording Edison the opportunity to present evidence

supporting its contention that the S-1 filing is not in contravention of national antitrust policy and that it is rendering a public utility grade of service.

The Rate S-1 terms and conditions now in effect have not obstructed the Petitioners' ability to participate in the various joint power supply projects in New England. The notice requirements are predicated upon the planning and operating needs of Edison and are always subject to a standard of reasonableness.

Predating the submission of Rate S-1 to the Commission, in discussions with its customers, including petitioners, Edison has made it clear that if the Petitioners choose to accept power from one of the current New England joint power supply ventures, Edison will wheel the power and offer partial requirements service for the balance of Petitioners' load.

The notice provisions of the S-1 rate all relate to effective planning and operation of Edison's system. The cancellation by Rate S-1 customers of all or part of Edison's service obviously could have a significant impact on Edison's planning and operation and ultimately on Edison's retail customers. Since it takes 5 to 7 years to construct a large power plant, any S-1 customer planning to participate in such a project would not find the five-year notice burdensome. It does, on the other hand, give Edison reasonable and necessary notice of a customer's future plans. Edison, without such notice, would be unable to make sound forecasts and

economic studies to determine the amount of additional capacity for which it should plan.

By the end of 1970 the Rate S-1 filing data estimated the combined demands of the seven S-1 customers to be in excess of 370,000 kilowatts. The unexpected loss of a load of this magnitude without five years' notice could work a substantial hardship on Edison. On the other hand, the amounts of power which will become available to the Rate S-1 customers from the current joint ventures in 1970, 1971, and 1972 are known to be much smaller. For this reason, Edison found that a much shorter notice period was reasonable in these circumstances.

These and similar issues, which have been under discussion for some years with Staff and customers in connection with N and N-1 rates, and which the Petitioners attempt to tie to antitrust implications, are not of a nature to warrant summary rejection by the Commission. The Report of the Attorney General's National Committee to Study the Antitrust Laws, Antitrust Developments 1955-68, states at page 204:

A concomitant of the Supreme Court's insistence that regulatory agencies weigh the anticompetitive effects of transactions within their jurisdiction is the requirement that the appropriate regulatory agency be given an opportunity to do the necessary weighing. Accordingly, the court has developed the doctrine of primary jurisdiction to restrain from attacking, as violative of the antitrust laws, transactions specially committed to a regulatory agency's charge [citing discussion of United States v. Far East Conference, 342 U.S. 570 (1952) in 1955 Att'y Gen. Rep. at 278-79]. (Emphasis added.)

Indeed, Petitioners' in quoting Municipal Electric Ass'n. of Massachusetts v. S.E.C., 134 D.C. App. at 150, 413 F. 2d (Br. 30), at 1057 shows that they understand the need for a hearing on this type of issue rather than summary rejection. The quoted portion of the decision by this Court states in part, "The assertions by the Municipals as to which they seek an evidentiary hearing . . ." (emphasis added.) On page 33 of Petitioners' brief they comment that this court "remanded the proceeding with direction that the municipals' antitrust contentions be considered (emphasis added)." It is difficult to reconcile this emphasis on the need for an evidentiary hearing before an administrative agency to consider antitrust matters with the petitioners present position that no hearing be granted and summary rejection be applied to the Edison S-1 Rate.

The Commission's reasons for denying Petitioners' motion to reject the Rate S-1 filing were amply articulated. The Commission said, in denying summary rejection of Rate S-1 for filing, "Edison's contentions in support of its filing and the protest of its customers raise questions which can best be resolved through a public hearing", (R.582, Order of April 29, 1970). On application for rehearing, the Commission stated that,

the substantive issues raised by the Towns, e.g., antitrust and anticompetitive contentions, quality of service rendered, etc., do not warrant rejection of this rate filing.

(R.736, Order of June 26, 1970). These are explicit findings

that the pleadings raise questions of substance that require hearing for the development of facts and argument. Nothing more is required for denial of summary procedure and an order fixing hearing. Certainly, contrary to the Petitioners' claim (Pet. Br. 45-50), the Commission is not required in such an order to discuss in detail or to make findings on the merits of Petitioners' substantive claims. None of the cases cited by Petitioners at pages 45 to 50 of their brief hold to the contrary.

The true impact of the Petitioners' rejection argument is perhaps most plainly revealed in the charge at page 46 of their brief that Edison at the time of the Rate S-1 filing was "already earning a more than adequate rate of return" and that the Rate S-1 "inflate[d] further its profits."<sup>1/</sup> It would seem that the Court and presumably the Commission are expected to accept, as a basis for summary rejection, Petitioners' bare charges, though they clearly raise fundamental factual questions which cannot be resolved in the absence of a record.

## II

ACCORDING TO THE COMMISSION'S REGULATIONS,  
THE PROPER "FILING DATE" WAS MARCH 30, 1970 AND,  
IF THE RATE HAD NOT BEEN SUSPENDED, THE  
"EFFECTIVE DATE" WOULD HAVE BEEN  
THIRTY DAYS LATER, OR APRIL 30, 1970

---

<sup>1/</sup> The return to Edison from its service to Petitioners and its three other municipals contained under Rate M was 3.4% in 1968. For these same customers it would have been 6.12% under Rate S-1 as shown in the filing data.

The Commission correctly assigned March 30, 1970 as the filing date of Edison's Rate S-1. Section 35.2(c) of the Commission's regulations (18 C.F.R. §35.2(c)), defines the "filing date" of a rate schedule as follows:

The term "filing date" as used herein shall mean the date on which a rate schedule filing is completed by the receipt in the office of the Secretary of all supporting cost and other data required to be filed in compliance with the requirements of this part, unless such rate schedule is rejected as provided in §35.5. If the material submitted is found to be incomplete, the Secretary will so notify the filing utility within 30 days of the receipt of the submittal.

Ninety-two days prior to March 30, Edison filed all of data which it believed was required to be filed under the Commission's regulations, both the data required to be filed sixty days prior to the proposed effective date (18 C.F.R. §35.13(b)(4)) and the data required to be filed thirty days prior to the proposed effective date (18 C.F.R. §35.13(a), (b)(1), (b)(2), (b)(3)). (R.282).

The Secretary of the Commission requested certain additional data and an explanation of certain other matters by letter dated March 17. (R. 444). Edison delivered the requested material on March 30, 1970. (R. 470). Although Edison did not believe that the requested material was required to be filed by either the 60 day or the 30 day filing requirements of the Commission regulations, it requested that, if the Commission felt otherwise, the date of submittal of the additional information be assigned as the filing date and that the rate be permitted to go into effect 30 days later, in accordance with the Commission's regulations.

(R. 470). Subsection 35.2e of the Commission regulations (18 C.F.R. §35.2(e)) defines the "effective date" of a rate schedule as,

the date on which a rate schedule filed and posted pursuant to the requirements of this part is permitted by the Commission to become effective as a filed rate schedule. The effective date shall be 30 days after the filing date, or such other date as may be specified by the Commission.

The Commission accepted Edison's S-1 rate for filing on March 30 and let it become effective, after a one day suspension, on May 1, 1970. (R.580, Order issued April 29, 1970).

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The Petitioners complain that Edison's filing data did not include a statement of depreciation "by functional classification" as set forth in 18 C.F.R. §35.13(b)(4)(iv) Statement E.

Edison historically has used a composite depreciation rate and used such rate in the cost of service study filed with Rate S-1. As a result of a compliance audit by the Commission accounting staff, Edison in 1968 undertook to study the functionalization of its depreciation accounts. It engaged the economic consulting firm of Jackson and Moreland to conduct a complete analysis of its plant for the purpose of establishing separate depreciation accounts for the basic classes of plant. The study was not completed at the time of the Rate S-1 filing and this fact was known by the staff of the Commission. A preliminary study had been furnished to the staff during the summer of 1969 when the staff was

investigating Edison's costs in connection with the Rate N-1 filing. Subsequently the study was completed and provided to the Commission staff and other parties in the consolidated rate proceedings before the Commission, including the Petitioners. The depreciation study is utilized in Edison's cost of service study for 1969, the test year being used at the hearings in the consolidated proceedings.

The purpose of the data set forth in the Commission's regulations pertaining to rate schedule filings is solely to permit analysis, efficient evaluation, and expeditious processing of submitted rate schedules by the Commission. This was succinctly stated in the Notice of Proposed Rulemaking issued on December 28, 1962 in connection with the complete revision of such regulations. 28 Fed. Reg. 128 (1963). Paragraph 4 of the Notice states in part:

The proposed revision revises completely the present regulations. More detailed cost and other data will be required hereafter in support of rate schedule submittals. The information provided by this additional data will enable the Commission to process rate schedule filings more expeditiously. Under the present regulations, the data required to be filed is inadequate for efficient evaluation by the Commission of rate schedule filings....

\* \* \*

(3) The notice requirements, §35.3, have been amended to permit filing of all rate schedules not less than 30 nor more than 90 days before the proposed effective date of the schedule, unless exception is granted.

(4) A new section, §35.6, permits a public utility to submit a rate schedule to the Commission staff for suggestions prior to filing the schedule . . . .

(5) Section 35.7 increases from two to five the number of copies of a rate schedule and accompanying

data to be filed, when the rate schedule proposes increased rates or charges. The number of copies was increased in order to supply the Commission and its staff with a sufficient number of copies to expedite processing and analysis of such rate schedule changes.

(6) Section 35.8 limits the date by which comments by interested parties must be submitted to 20 days after the date of the rate schedule filing. Presently, the regulations do not specify any time limitation. This will assure time for consideration and review of all comments before Commission action on the rate schedules as filed. (Emphasis supplied.)

The purpose of the data listed in the regulations is solely for Commission use in carrying out its duties under section 205 of the Federal Power Act, 16 U.S.C. 824d. It is not for the Petitioners to seek rejection of a filing on the grounds of technical non-compliance. In this case the Commission was well aware of the status of Edison's study to functionalize its depreciation accounts. The staff had a preliminary copy of a report thereon. Further, the staff in the summer of 1969 had conducted an independent study of Edison's costs in relation to its rates to Petitioners. Under these circumstances, for the Commission to accept Edison's filing on the basis that the filing did "substantially comply" with the data requirements was certainly a matter within the discretion of the Commission. If the Commission felt that the lack of final data on functionalized depreciation prevented it from analyzing and making an efficient evaluation of Edison's filing, it would have been the Commission's prerogative to complain, but certainly not the Petitioners'.

In any event, the procedures followed did not prejudice

the Rate S-1 customers inasmuch as they had notice of Edison's proposed Rate S-1 at the time of the January 29 submission. In fact they had ninety-two days notice. Cf. Udall v. Kalerak, 396 F.2d 746 (C.A. 9, 1968). While the question of waiver is raised in the Commission's orders and the dissent thereto, it need not be reached since the submission and filing were in substantial compliance with the regulations. Edison was precluded from presenting the explanation of its compliance with the regulations to the Commission by the Commission rules of practice and procedure which preclude the filing of answers to applications for rehearing (18 C.F.R. §1.34(d)).

### III

#### THE COMMISSION DID NOT ABUSE ITS DISCRETION AND ADEQUATELY STATED ITS REASONS FOR SUSPENDING BOSTON EDISON'S APPLICATION FOR ONE DAY

A. No abuse of discretion has occurred. -- Under the Federal Power Act, section 205(e), 16 U.S.C. 824d(e), when a new rate schedule is filed and before a hearing is held, the Federal Power Commission "may suspend the operation of such schedule and defer the use of such rate . . . , but not for a longer period than five months beyond the time when it would otherwise go into effect. . . ." In the event the rate goes into effect at expiration of the suspended period and the Commission later determines that it was too high, section 205(e) continues, the Commission may "by further order require such public utility or public utilities to refund, with

interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified." Section 2.4(h), Regulations of the Federal Power Commission, (18 C.F.R. 2.4(h)) provides:

Suspension of a rate schedule, within the ambit of the Commission's statutory authority is a matter within the discretion of the Commission.

Regulation 2.4(h) and section 205(e), Federal Power Act, 16 U.S.C. 824d(e), demonstrate the fallacy of Petitioners' contention that all rate filings must be suspended for five months, unless the Commission presents compelling reasons for it to be otherwise. By the very language of 205(e), Congress never intended to so restrict the Commission and, by its regulations, the Commission does not read such a restraint into its authority. In State Corporation Commission of Virginia, 14 FPC 805 (1955), the FPC noted that "Nothing in the law or precedent of the Commission requires or implies the suspension of every rate change filed (at 805)." The Commission continued, "In the exercise of its discretion, the Commission permitted the proposed increased rates of the gas producers to become effective November 1, 1954, or shortly thereafter, pursuant to the provisions of Section 4(d) of the Act." The filings were made about 30 days earlier. The Commission noted (at 806-807):

The exercise of the authority thus conferred upon the Commission is clearly discretionary. Courts have uniformly held that a determination by an administrative agency on matters committed to its discretion is entitled to dominant consideration. . . . As the

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Supreme Court said in [F.P.C. v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944)]. . . the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity."

Petitioners have called to our attention no material facts, and we know of none, which lead us to conclude that permitting the rates here in question to go into effect was not within the discretionary authority conferred on us by the Natural Gas Act, or was not a proper exercise of that discretion. The Commission, in permitting the rates in question to become effective, acted in the exercise of its best judgment in carrying out the provisions of the Natural Gas Act. Although required by the pressure of work to act with considerable dispatch, it gave the fullest consideration possible to such diverse factors as the data filed in support of the proposed increases, the probable impact on the consumer of such increases, the probable effect on the producers of the suspension of such increases, the volume of proceedings pending before the Commission, as well as such other relevant factors as were present in the circumstances. The Act, judicial decisions, and the Commission's own conception of its duties under the Act, cannot and do not ask for anything more.

As stated by the Supreme Court, "When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration." Udall v. Tallman, 380 U.S. 1, 16 (1965). The Federal Power Commission, the agency charged with the administration of the Federal Power Act, has interpreted section 205(e) as requiring the exercise of discretion, without any presumption of suspending filings for a five month period. The Commission's interpretation of its duty -- under the plain language of the statute, its own regulations, and its suspension order in this case -- is entitled to "great deference."

Appeals or petitions for review from the Federal Power Commission's suspension orders have been held to be interlocutory and dismissed. Humble Oil & Refining Co. v. Federal Power Commission, 236 F.2d 819 (C.A. 5, 1956), cert. denied 352 U.S. 967; Stanolind Oil & Gas Co. v. Federal Power Commission, 236 F.2d 824 (C.A. 5, 1956); Hunt Oil Co. v. Federal Power Commission, 236 F.2d 828 (C.A. 5, 1956), cert. denied 352 U.S. 970; Union Oil Co. of California v. Federal Power Commission, 236 F.2d 816 (C.A. 5, 1956), cert. denied 352 U.S. 969. In Long Island R.R. Co. v. United States, 193 F. Supp. 795 (E.D. N.Y., 1961), Judge Friendly of the Second Circuit (sitting on a 3-judge district court) wrote a penetrating decision analyzing numerous suspension cases, including those relied upon by petitioners, and concluded (at 799-800):

Still, we are not willing to say that under no circumstances may a court have jurisdiction of a suit to enjoin a suspension order. . . . [We] think a suit to enjoin such an order for lack of power may be entertained if, but only if, the complaint shows that the suspension is plainly without statutory authority or violates "a clear statutory command, ". . . and that the complaining party has no other available remedy.

Certainly there have been many rate filings which the Commission has suspended for the maximum period of five months, albeit few of these were electric utility wholesale rates filings in the 1960's since there were few such filings. There also have been filings which the Commission has suspended for less than five months. Boston Edison Co. (Docket No. E-7485, Order of March 27, 1970) (increased rates, one day

suspension); Consolidated Gas Supply Corp., 41 FPC 641 (1969) and cases therein cited (increased rates, suspension period on reconsideration was shortened 61 days); Gulf Power Co. (Docket No. E-7382, Order of December 18, 1967) (increased demand, same rate, one day suspension); Idaho Power Co., (Docket No. E-7229, Order of June 11, 1965) (increased demand, same rate, one day suspension); Public Service Co. of Oklahoma, 32 FPC 1396 (1964) (terms and conditions, one day suspension); Georgia Power Co., 32 FPC 1368 (1964) (terms of rate, one day suspension); Wisconsin Michigan Power Co., 32 FPC 536 (1964) (increased rates, one day suspension); Gulf Oil Corp., 23 FPC 785 (1960) (increased rates, two of five filings were suspended for one day); this list does not include examples of the many cases involving rate filings which the FPC has allowed to take effect without any suspension period.

Finally, the explanation for the Commission's suspension for a period of one day in Utah Power and Light Co., 30 FPC 885 (1963), upon which amicus curiae speculated, can be found in Florida Gas Transmission Co., 34 FPC 995 (1965). There in a dissent Commissioner Ross gave the reason:

"... the Commission suspended for a period of only one day in view of information showing a reasonable likelihood that the proposed increase was required. Ultimately, that rate increase was found to be just and reasonable and the proceeding was terminated. Yet, in that case, two members of the present majority dissented to the shortened suspension period." (at 998)

Petitioners and amici curiae attempt to make factual distinctions between cases in which they cite the suspension

period has been less than five months and the case at hand. Of course, just about all of those cases are factually distinguishable. These very distinctions make it important for the Commission, with its expertise, to have discretion over the suspension period if, indeed, suspension is necessary. What petitioners and amici curiae have failed to distinguish is the entire line of authority giving the Commission the discretion, without any so-called presumptions, to decide upon suspension and the suspension period.

B. The Commission has adequately stated its reasons for ordering the suspension. -- The Federal Power Commission in its order of April 29, 1970, pointed out that "Edison's contentions in support of its filing and the protest of its customers raise questions which can best be resolved through a public hearing (R. 582)." The Commission stated that consequently "we are ordering a hearing to resolve those questions and we shall suspend for one day the rate schedule filing . . . (R. 582)." It also consolidated several dockets because "they contain common questions of law and fact that can best be resolved in a consolidated hearing (R. 586)." The Commission, in accordance with section 205(e), Federal Power Act, placed "the burden of proof to show that the increased rate or charge is just and reasonable" upon the public utility.<sup>1/</sup> Until an evidentiary hearing is held, the

<sup>1/</sup> The Petitioners are incorrect in characterizing the statement as to the burden of proof as "the Commission's finding" (Br. 50).

Commission said, "proposed increased rates and charges . . . have not been shown to be justified and may be unjust, unreasonably, unduly discriminatory, or preferential, or otherwise unlawful under the Federal Power Act (R. 587)." The Commission concluded by ordering that "a public hearing shall be convened to commence with a prehearing conference to be held on May 19, 1970, . . . concerning all of the issues raised in the proceedings consolidated by this order (R. 588-89)."

In its order of May 26, 1970, denying amendment of the earlier order, the Commission specifically pointed out that the public interest would best be served by the one day suspension it had initially ordered (R. 710):

The motion and answer present a factual difference as to whether a financial emergency exists because of the one day suspension ordered by us. However, that difference is not crucial to determination of the issue involved here. It appears that relief is available to the Municipalities under State law even to the extent of recouping any losses that may result from the time lag of tracking Edison's increase into their retail rate structure. On the other hand, any relaxation of our one day suspension period will result in an irretrievable loss to Edison. Furthermore, the increased rates are being collected by Edison subject to refund of any amounts found unjustified at an interest rate of 8%. Under these circumstances, we believe that the public interest is best served by our determination to suspend the increased rate for one day.

We believe that the Commission's reasons are adequately stated. Clearly, no abuse of discretion -- suggested by petitioners as the only grounds upon which to reverse the suspension order (Br. 50-62) -- has occurred. An example of the sound discretion exercised by the Commission in ordering

brief suspension periods is found in Wisconsin Michigan Power Co., 32 FPC 536 (1964), cited at p. 17 supra in which the Commission ordered a one day suspension of Wisconsin Michigan's rate filing as it affected one of its customers. The Commission stated that the purpose of the one day suspension was to "permit an adjudication of . . . whether or not the cooperative can justify a lower rate for itself than for Wisconsin Michigan's other customers while at the same time avoiding any undue discrimination in the event that we should subsequently determine that no such differential is appropriate." (at 537).

As noted in Consolidated Truck Service v. United States, 193 F. Supp. 773, 777 (N.J. 1960), "reasons differ from findings in that the former relate only to law, policy and discretion rather than to facts."<sup>1/</sup> The court then gave examples of reasons in cases in which review was denied (at 777, fn. 4):

In Ferguson - Steere the reason given was ". . . that the rights and interest of the public would be injuriously affected thereby." 126 F. Supp. at 589.

In Hudson and Manhattan the reason was ". . . the rights and interests of the public appearing to be injuriously affected thereby." (Opinion unreported.)

The court in Consolidated Truck Service concluded by pointing out that "we by-pass the question of whether even an arbitrary and capricious suspension order in the present context is

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<sup>1/</sup> The cases upon which petitioners rely, unlike this case, deal with agencies' final decisions and findings supported by the evidence presented (Br. 47-49).

subject to judicial review. . . . [S]uffice it to say that without more proof it cannot be said that the action of the Commission is arbitrary and capricious. Surely, such a conclusion must await the results of the hearing (193 F. Supp. at 770)." See also Oscar Mayer & Co. v. United States 268 F. Supp. 977 (W.D. Wis., 1967).

The Commission's preliminary order in this case plainly meets the statutory standard of setting forth reasons for the suspension and should not be upset as being arbitrary or capricious.

#### IV

##### THE COMMISSION'S ORDERS ARE FAIR TO ALL PARTIES

Edison's rate was properly filed, it is complying with a proper order of the Commission that "Edison, subject to further orders of the Commission shall charge and collect the increased rates and charges set forth in Rate S-1 for all power sold and delivered thereunder." Such charges and collections are subject to refund, if the Commission shall find a portion of the increase not justified, together with interest of 8 percent per annum from the date of payment until refunded. In compliance with the Commission order Edison is keeping accurate accounts of all amounts received by reason of the increased rates and charges effective May 1, 1970, and is reporting to the Commission on this matter as required by the order.

Over 5 months have passed since the date of the Commission order making the Rate S-1 effective. There has been

no showing to this Court or to the Commission in the ongoing public hearing of any financial or other emergency to any of the S-1 Rate customers during the 5 months which coincides with the period of the suspension here requested by the Petitioners.<sup>1/</sup>

In the Commission's order issued June 26, 1970 (R. 735-37), the Commission again set forth its awareness of the issues raised by the Towns and emphasized the proper procedure to be followed to bring this matter to a conclusion. It stated (at page 2 of the order):

The arguments advanced by the Towns are arguments that have been urged in a number of filings made by them and other parties to this proceeding, which were considered and denied by us in our orders issued April 29 and May 26, 1970. In summary, they allege that we erred (1) by not rejecting the rate proposal, (2) by accepting it for filing, and (3) by suspending it for only one day. In their arguments, they assert procedural irregularities and substantive deficiencies as bases for contending that we should have rejected and not accepted for filing the rate proposal filed by Boston Edison Company (Edison). However, the substantive issues raised by the Towns, e.g., antitrust and anticompetitive contentions, quality of service rendered, etc., do not warrant rejection of

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<sup>1/</sup> Newspaper accounts show that at least some of the customers served by Edison under the S-1 rate raised their retail rates after May 1, 1970. An 11.6% increase in Reading's rates became effective for energy delivered after May 1, 1970. North Reading Transcript, May 14, 1970, p. 1. Wakefield increased its rates by 10.9% effective June 1, 1970. Wakefield Daily Item, May 5, 1970, p. 9. Wellesley instituted a 15% increase in rates effective July 1, 1970. The Townsman, May 28, 1970, p. 1. That report quoted Everett R. Kennedy, Superintendent of the Wellesley Board of Public Works, as stating that "this approximate 15% increase still leaves the Wellesley residential customer in a favorable position as compared to Edison's residential rate." Ibid.



this rate filing. Those matters may be relevant to the issue of rate level but are not relevant to the procedural issue of whether we should accept for filing or reject the rate increase proposal. This is especially true, as here, when the increased rates are being collected subject to refund. If the rate level is excessive, the Towns will receive refunds with interest. On the other hand, if we were to reject the rate proposal and then determine that the substantive contentions advanced by the Towns lack merit, Edison could not recover those lost revenues. In our judgment, the public interest requires adherence to the procedural decisions made in this proceeding.

#### CONCLUSION

For the foregoing reasons, the Federal Power Commission should be affirmed in (1) accepting Boston Edison's application for filing when it was completed over Petitioners' contention that it should be rejected, and (2) providing for the new rates to become effective 31 days later, after a one day suspension period which enables the Commission to later order refunds if found appropriate after decision on the merits.

Respectfully submitted,

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October 16, 1970

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,450

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Municipal Light Boards of  
Reading and Wakefield, Massachusetts,

Petitioners,

v.

Federal Power Commission,

Respondent.

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ON PETITION FOR REVIEW OF AN ORDER OF  
THE FEDERAL POWER COMMISSION

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REPLY BRIEF OF PETITIONERS

United States Court of Appeals  
for the District of Columbia Circuit

FILED NOV 9 1970

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November 9, 1970

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24,450

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Municipal Light Boards of  
Reading and Wakefield, Massachusetts,

Petitioners,

v.

Federal Power Commission,

Respondent.

---

ON PETITION FOR REVIEW OF AN ORDER OF  
THE FEDERAL POWER COMMISSION

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REPLY BRIEF OF PETITIONERS

This case involves a filing by Boston Edison Company of a 20% wholesale rate increase and an extensive modification of related terms and conditions. The Federal Power Commission: (i) denied the customers' motion to reject, (ii) suspended the increase for only one day rather

than the 5-month period provided by Section 205(e) of the Federal Power Act, and (iii) "waived" sub-silentio its regulation requiring that all supporting data shall be submitted 60 days prior to the date the increased rate is to become effective.

The Commission, with minor cursory exceptions, gave no factual explanations or reasons for its actions. The counsel for the Commission and Edison speculate as to the reason for the Commission's action, but these reasons are insufficient even if it were assumed, arguendo, they were the Commission's. Cf. Public Service Commission of New York v. FPC, D. C. Cir. No. 23446, decided June 29, 1970 (slip opinion, p. 6).

This is not a case involving financial hardship. Edison's overall rate of return has been rising steadily -- from 7.07% in 1966 to 8.10% in 1968, second highest in New England, to 8.5% in 1969 (R. 546-7, 648-9, 666-9).

I

THE COMMISSION COMMITTED REVERSIBLE ERROR  
IN REFUSING TO REJECT THE EDISON RATE FILING

A. Edison's Failure to Comply With the  
Commission's Regulations Required Rejection  
of Filing.

The Towns' brief (pp. 37-40) points out that the accounting in Edison's books for depreciation does not conform to the Commission's Uniform System of Accounts and, therefore, since the Commission's Regulations with regard

to applications for rate increases require that accumulated depreciation and depreciation expense be functionalized and stated in accordance with the requirements of the Uniform System of Accounts, Edison's rate filing should have been rejected as deficient.

The Commission's order denying the Towns' motion to reject does not discuss the point at all. The briefs of counsel for the Commission and Edison seek to bridge the gap by speculating as to reasons why the Commission took the action it did, assuming it considered the problem at all. Not only are these proposed reasons inadequate on their face, but the reliance of these briefs upon a depreciation study which, it now appears, Edison furnished privately to the Commission Staff, without notice to the parties, shortly before the Commission's order, raises an additional serious question with regard to administrative due process. This further reinforces the Towns' position that the Commission's denial of the Towns' motion to reject was arbitrary and capricious.

1. The Speculation in the Brief of Commission Counsel is Implausible.

Commission counsel argue in their brief (pp. 16-20) in effect that §35.13 (b)(4)(iv) of the Commission's Regulations does not mean what it explicitly says on its

face, i.e., that the balance sheets and income statements must be "in the form prescribed by the Commission's Uniform System of Accounts" as stated in Statements A and B, i.e., that accumulated depreciation and depreciation expense, along with everything else, must be in this form. (FPC br., App. p. 36) Commission counsel would find in Statements E and I, which cover the additional requirement for functionalizing between production and transmission, etc., a waiver of the requirement in Statements A and B that depreciation accounts must as a starting point conform to the Uniform System of Accounts.

There is no basis for this argument. The Commission's Uniform System of Accounts requires that depreciation be accumulated and expensed by separate plant <sup>1/</sup> accounts. Edison admittedly has not done this; instead, it has developed its depreciation expense by applying a straight overall percentage to all of its plants collectively

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1/ ". . . each utility shall maintain subsidiary records in which this account is segregated according to the following functional classification for electric plant: (1) Steam production, (2) Nuclear production, (3) Hydraulic production, (4) Other production, (5) Transmission, (6) Distribution, and (7) General . . ." Acct. No. 108. Uniform System of Accounts, Public Utilities and Licensees. See discussions R.362-9, 431.

and has accumulated its depreciation reserves on the same  
basis.<sup>2/</sup> Since it did not keep its depreciation records  
on a separate account basis, it could not total these  
by functions as required by Statements E and I.

The error of the Commission counsel is underlined by their further contention (FPC br., p. 18) that functionalizing is a simple matter of allocation from data which is "easily available in the rate filing itself [and] their derivation [is not] a difficult process." This simplistic view is wholly at odds with the fact that it has taken Edison itself several years to functionalize its depreciation accounting in accordance with the requirements of the Commission's Uniform System of Accounts.

Edison's brief states that after a Commission audit in 1968, it engaged a consulting firm to functionalize its depreciation accounts to make a study, which was not completed until 1970 (Ed. br. pp. 10-11). Actually, the Commission Staff

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<sup>2/</sup> ". . . . no breakdown between various kinds of property has been made on the books of the Company" (R. 753, 765). Statements E and I of Edison's submission of January 29, 1970.

has been pressing Edison since 1966 to bring its depreciation accounting into accord with the Commission's requirements, and Edison did not complete its efforts in this direction until March 1970.<sup>3/</sup> In light of the almost four years which Edison, under pressure from the Staff, took to prepare this study with full access to its own books and records, it is indeed incongruous for the Commission Staff now to argue that the Towns could easily prepare a comparable study from the meager data provided in the January 29, 1970 filing.

The fallacy in Commission counsel's argument is further emphasized by the implication (FPC br., p. 17, fn. 7) that the Commission might have relied upon last-minute journal entry adjustments which were "filed with the Commission on April 22, 1970, and were available to the public." Not only was the data received by the Commission on April 27,

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<sup>3/</sup> Edison wrote on August 1, 1966 (Appendix A) that it would "endeavor to meet the Staff's requirements for a reasonable and proper functional allocation" but "[t]his takes considerable time as we must gather factual data to support our position." A study by the consultant firm of Jackson & Moreland was ordered in February 1968; its preliminary study was furnished to the Commission Staff in early 1969, and its final study in April 1970 -- both without notice to the Towns. (See pages 7 to 9, infra).

NOTE: Both the Commission's and Edison's brief refer to matters outside the record before this Court. We do not object, and in reply likewise refer to such matters. In each case the materials we quote and reproduce are matters of public record, of which the Court can take judicial notice.

1970, <sup>4/</sup> but the filing was without notice to the Towns, so that contrary to the implication of Commission's counsel, it is too much to expect the Towns or other customers to discover this submission and convey their views before the Commission acted two days later on April 29, 1970.

2. Edison's Preferred Rationalization is Unfounded.

Edison offers a different rationalization for the Commission's action on the depreciation accounting question, and urges on the basis of materials outside this record (Ed. br., pp. 10-11):

"As a result of a compliance audit by the Commission accounting staff, Edison in 1968 undertook to study the functionalization of its depreciation accounts. It engaged the economic consulting firm of Jackson and Moreland to conduct a complete analysis of its plant for the purpose of establishing separate depreciation accounts for the basic classes of plant. . . A preliminary study had been furnished to the staff during the summer of 1969 when the staff was investigating Edison's costs in connection with the Rate N-1 filing. Subsequently the study was completed and provided to the Commission staff and other parties in the consolidated rate proceedings before the Commission, including the Petitioners." (Ed. br., pp. 10-11).

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4/ Appendix B, infra.

\* \* \*

"In this case the Commission was well aware of the status of Edison's study to functionalize its depreciation accounts. The Staff had a preliminary copy of a report thereon." (Ed. br., p. 12).

In thus claiming that the Commission may have relied upon the long-term study by Jackson & Moreland,  
5/ Edison not only parts company with the Commission counsel, but if Edison's rationale were accurate, the effect of the Commission's action is to deny the Towns administrative due process. The Towns had no notice or knowledge until months thereafter that Edison had in fact furnished the Commission with both a preliminary and final depreciation study prior to the time the Commission acted. Indeed, Edison left a contrary and misleading impression as recently as March 6, 1970, when, in responding to the Towns' objections with reference to Edison's failure to comply with the Commission's depreciation accounting requirements, Edison stated (R. 431):

"As the Commission is aware, some time ago Edison engaged the firm of Jackson & Moreland to conduct a complete analysis of its plant for the purpose of establishing separate depreciation accounts for the basic classes of plant. The study is not yet complete and could not be included with the S-1 rate filing, but is expected to be available in the near future."

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5/ The brief of Commission counsel does not attempt to rely on the Jackson & Moreland depreciation study as a basis for the Commission action.

The effect of this statement was to mislead the Towns in two respects: (i) there was no hint that a preliminary copy of the report was already in the hands of the Commission Staff, and (ii) it left open the impression that copies would be furnished to all parties when the report was completed and furnished to the Commission.

The fact is, as already pointed out, journal entries were conveyed to the Commission on April 27, 1970, just two days prior to the Commission order of April 29, 1970. In addition, privately and without notice to the parties, some time in April 1970 the Jackson & Moreland final report was conveyed <sup>6/</sup> to the Commission Staff. In these circumstances, for the Commission to have relied on this filing as a basis for its action herein would have resulted in a denial of administrative due process.

---

6/ The matter came up in the October 1970 Commission hearings on this rate case. Edison's Assistant Treasurer testified that: "A copy of the journal entry and an explanatory letter were provided to the staff in April of this year, together with a copy of the Jackson & Moreland's report. The Commission's Chief Accountant in a letter dated May 12, 1970 indicated that all of the exceptions to compliance had been met and that Edison's accounting records comply with the rules and regulations of the Commission." (Tr. 385). Edison's letter of April 22, 1970 (Appendix A, infra) makes no mention of the Jackson & Moreland report. Both Commission and Edison hearing counsel successfully objected to efforts to obtain further details as to the communication (Tr. 646-650, 696-7, 744-6). The Hearing Examiner ultimately ruled on October 9, 1970 that Edison should disclose "whether counsel for applicants knew in April of this year, and at that time, the company was furnishing a copy of the Jackson and Moreland report to the Staff." (Tr. 646-50, 696-7, Appendix C, infra). Counsel has not yet furnished this information.

B. The Clear Antitrust Violations Call for Rejection of the Rate Filing.

1. While not questioning its authority summarily to reject increased rate filings, the Commission claims that such authority may be exercised only where the infirmity in the filing is a matter of law and not merely a violation of national public policy. Assuming, arquendo, that the claimed distinction is valid, it does not assist the Commission here -- the Towns' challenge to the Edison filing is patently based on violations of law.

The clear thrust of this Court's recent decisions in Municipal Electric Ass'n. of Massachusetts v. SEC, 134 U.S. App. D. C. 145, 413 F.2d 1052 (1969); \_\_\_\_\_ U. S. App. D. C. \_\_\_\_\_, 419 F.2d 757 (1969); Municipal Electric Ass'n. of Massachusetts v. FPC, 134 U.S. App. D. C. 310, 414 F.2d 1206 (1969); and Cities of Statesville, et al v. AEC, \_\_\_\_\_ U. S. App. D. C. \_\_\_\_\_, \_\_\_\_\_ E2d \_\_\_\_\_, Nos. 21,706 and 21,844, December 5, 1969, is that each of those regulatory agencies is obliged to take action to assure that the Massachusetts Municipal systems will have (1) the ability to compete with the privately-owned systems for wholesale loads and (2) the ability to participate in the economies of

scale by securing power (through ownership or purchase), from the large, efficient, projects now or hereafter to be built in New England. As shown in our main brief (pp. 31-37), the anticompetitive restrictions contained in Edison's filing violate, on its face, both the antitrust laws and these specific guidelines laid down by the Court.

Thus, it is plain that if Edison stated in its filing that it retained the right to decide whether its "customers may compete with it for desirable wholesale loads" even the Commission, which has had difficulties in recognizing antitrust violations and its responsibilities in that area, would have had to recognize the illegality of such a provision. See, e.g., United States v. Arnold, Schwinn & Co., 388 U. S. 365 (1967). Yet, such is precisely the effect of Edison's proposed prohibition against the reselling of power to other utilities without Edison's consent.

As to the proposed requirement of five years' notice before the Towns' may purchase power from other suppliers, the Commission would minimize the Towns' concern by urging (FPC br., p. 13) that "if it finds particular rate schedule provisions invalid, [it] would then have to determine what

substitute provision, if any, would be just and reasonable." This argument, however, ignores the critical facts (1) that the restraints inherent in this provision would, under this approach, be operative until the Commission made the determination thus indicated, and (2) that during this interim period the Towns would be disabled from taking advantage of the opportunities to purchase or participate in new power supplies now becoming available to the Towns, including, for example, the opportunity to purchase power from the Vermont and Maine Yankee nuclear projects.

Commission counsel has sought to rationalize the Commission's failure to preserve these opportunities by urging (FPC br., p. 16) that "the [Vermont Yankee] offer was apparently not even tendered until after the Commission's orders here were entered and hence was not called to the Commission's attention at that time." But the fact is that the opportunity was called to the Commission's attention February 26, 1970 (R. 375-6). Moreover, the opportunity to purchase Vermont and Maine Yankee power is not the only one with which the Towns are concerned. Our highlighting of that particular opportunity was only for the purpose of illustration. There are many other opportunities to purchase or participate in new power supplies not available such as Northfield Mountain pumped storage (Municipal Electric Ass'n. of Massachu-

setts v. FPC, supra), New Brunswick importation, and other current offerings by the New England Planning Committee. Until the Commission makes that determination, the Towns would be barred from taking advantage of these opportunities if Edison chooses to enforce the literal terms of the S-1 filing.

Edison seeks to undercut the force of the foregoing by making in its brief before this Court an offer to waive the restrictions as to "current joint ventures in 1970, 1971, and 1972" (Ed. Br., pp. 5-6). And in connection therewith, Edison goes outside the record by stating (Ed. br., p. 5):

"Predating the submission of Rate S-1 to the Commission, in discussions with its customers, including petitioners, Edison has made clear that if the Petitioners choose to accept power from one of the current New England joint power supply ventures, Edison will wheel the power and offer partial requirements service for the balance of Petitioners' load."

While these statements are generally accurate, it should be noted that these proposals were made at a time when the rate in effect (i) permitted termination of service on one-year's notice, and (ii) did not require customers to purchase their

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7/ Significantly, Edison did not offer any such waiver in its opposition filed in March 1970 to the Towns' February 1970 motion to reject.

full requirements from Edison. Nothing was said about Edison filing its new terms and conditions requiring customers to give five-years' notice of service termination and to purchase their full requirements from Edison. The Towns are pleased that Edison is formally holding itself out as offering transmission and partial requirements service, and will accept one to two year written notices as to current New England projects. Obviously, this undertaking could have been obtained by the Commission had it taken a stand when the filing was made.

Moreover, there still remains what the Commission should have required initially, a specification of the reduced notice requirements, as well as the filing of the rates for the related transmission and partial requirements service. Thus, the Towns, relying on Edison's recent assertions, have accepted the offers for participation in the Vermont and Maine Yankee projects, although at least two other Edison customers have been deterred by the Rate S-1 filing (Appendix D, infra). Nonetheless, they will not be able to close these transactions until the rates for transmission and partial requirements are determined. Among the

objections raised by the Towns in support of rejection was the incompleteness of the services and rates proposed (R. 381). The Commission could have required as a condition to accepting Rate S-1 for filing that these matters be encompassed in a modified filing to cover, at least, the interim period of Commission investigation and hearing. (See pp. 21 to 24, infra). In short, Edison is still retaining the power to make Vermont and Maine Yankee purchase uneconomic for the Towns.

In this regard, it should be noted that in response to the following inquiry of Commission counsel during the administrative hearings on Rate S-1 (Tr. 307):

"Mr. Debevoise, in your statement that the company would help the municipalities obtain the various power that Mr. Spiegel was speaking about this morning, that is that you would wheel the power for them, you said under rates that would be found -- if you couldn't agree with the municipalities that would be found to be just and reasonable by the Federal Power Commission. Would this proceeding be the vehicle for such a finding?"

Counsel for Edison responded:

"I don't believe it would."

Accordingly, the procedure resulting from the Commission's action leaves open to Edison the opportunity to force years of further litigation before there are determined all the terms and rates necessary to effectuate realistically purchase of Vermont and Maine Yankee by the Towns.

2. While we have accepted, arguendo, until this point the distinction between violation of law and violation of public policy urged by the Commission, the result, we submit, would be the same in either case as far as the Commission authority and responsibility is concerned, and hence the alleged distinction is meaningless for present purposes. 8/ Federal Power Commission v. Texaco, Inc., 377 U.S. 33 (1964) makes clear -- indeed emphasizes -- the necessity that the Commission in view of its limited and generally unsatisfactory suspension authority, should reject rate filings that violate public policy. 9/

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8/ Interestingly enough, the Commission does not dispute that the restrictive provisions violate public policy. Indeed, the preoccupation in its brief with the need to distinguish between violation of law and violations of public policy apparently recognizes that the restrictive provisions violate public policy.

9/ To be sure, in United Gas Pipe Line Co. v. Mobile Gas Service Co., 350 U.S. 332 (1956), rejection of the filing was deemed mandated as a matter of law. However, this does not negate the need for rejection where this violation is one of public policy.

The issue in Texaco was whether the Commission could summarily reject rate filings that contained pricing provisions other than of the type approved as permissible in an earlier rulemaking proceeding. The Court of Appeals had set aside the Commission's order holding "that while the regulations are valid as a statement of Commission policy, they cannot be used to deprive an applicant of the statutory hearing granted those who seek certificates of public convenience and necessity" (377 U.S. at 37. Emphasis added).

In reversing and reaffirming the Commission's authority summarily to reject filings which violate public policy, the Supreme Court stated (377 U.S. at 42):

"\* \* \* It must be remembered that under this Act rate increases are initiated by the natural gas company, the Commission having the burden by reason of §4(e) of the Act to initiate a hearing on their legality with only a limited power to suspend new rates. See United Gas Pipe Line Co. v. Mobile Gas Service Corp., supra. Natural gas companies that seek to enter the field with pre-arranged escalator clauses and the like have a built-in device for ready manipulation of rates upward. Protection of the consumer interests against the device may be best achieved if it is given at the very threshold of the enterprise.\* \* \*<sup>10/</sup>

<sup>10/</sup> FPC v. Hunt, 376 U.S. 515 (1964), Permian Basin Area Rate Cases, 390 U.S. 747 (1968), and Superior Oil Co. v. FPC, 322 F.2d 601 (C.A. 9, 1963), cert. denied, 377 U.S. 922 (1964), cited by the Commission (FPC Br., pp. 14-15) also involved situations where the Commission rejected rate filings, not because of any inherent illegality, but because acceptance would have been inconsistent with the Commission's view of the public interest. Thus, these cases also support the propriety of rejecting rate filings on public policy grounds alone. See also Amerada Petroleum Corp. v. FPC, 293 F.2d 572 (10th Cir. 1961), cert. denied, 368 U.S. 976 (1962).

The fact that the Commission in Texaco had promulgated a regulation incorporating its determination that to reject the provision as contrary to public interest and policy does not detract from its applicability here. Not only did the Supreme Court make no point of that circumstance in arriving at its judgment, but the regulation relates not to the propriety of rejecting but rather embodies the Commission's determination that the provisions involved in Texaco violate public policy. Here, there is no such question as far as the provisions here involved are concerned. Indeed, while it might be desirable for the Commission to establish regulations to effectuate its antitrust responsibilities as discussed in Northern Natural Gas Co. v. FPC, 130 U. S. App. D. C. 220, 399 F.2d 953 (1968) and Municipal Electric Association of Massachusetts v. SEC, 134 U. S. App. D. C. 145, 413 F.2d 1052 (1969), the Commission's failure to promulgate such regulations obviously does not operate to deprive the customers of the protection of these policies.

In this regard, there should also be noted the invalidity of the contention that the Commission's filing regulations are for the protection of the Commission, not the

customer. The aim of the Federal Power Act, like that of the Natural Gas Act, is "to protect the consumer interest" whether the issue is procedural (FPC v. Texaco, 377 U.S. 33, 41-4 (1964)) or substantive (FPC v. Hope Natural Gas Co., 320 U. S. 591, 610 (1944)). The regulations of the Commission, like the rules of Court, of course, are designed for the expeditious and efficient dispatch of its business. But such is not their sole purpose, they also must give those whose interests are at stake, an opportunity to assure that the Commission decisions are based on presentations which are complete as possible in the circumstances. In accepting a rate increase for filing, the Commission is permitting interim rates and terms which will be imposed on the wholesale customers for the years between filing and ultimate decision. The very fact that a public hearing is not required in connection with such a decision does not authorize procedural laxity. To the contrary, it bespeaks extreme procedural caution, because the customer does not have the protection of a public hearing.

The attempt to justify the Commission's action by urging that factual questions were presented by the Towns' motion to reject does not help our opponents (FPC br., p. 12; Ed. br., p. 3). As already noted, supra, the violations are

per se violations of the antitrust laws, and hence do not involve factual questions. But even if there were such questions open, there is nothing in Texaco, Hunt, Permian, Superior, or Amerada to suggest that the rejection there involved turned on the absence of factual questions. To the contrary, the Court's insistence upon the need for the Commission to provide a procedure for the early resolution of public policy issues arising in rate filings is equally applicable whether or not factual matters are in issue. The Commission's responsibility under Section 309 "to perform any and all acts . . . necessary or appropriate to carry out the provisions of [the Federal Power] Act" remains unchanged.

Edison cites Municipal Electric Ass'n. of Massachusetts v. SEC, 134 App. D. C. 145, 413 F.2d 1052 (1969), as supporting its position that where a factual question is raised regarding an antitrust issue final determination must await the conclusion of any required evidentiary hearing. But since, as already shown, there is no factual question here, and even if there were, Edison's contention has no bearing on the question as to the situation which is to prevail pending such final determination. Where a prima facie question of antitrust illegality is raised, the

status quo should appropriately be maintained until the underlying issues are resolved. This is emphasized by (i) the fact that it is usually impossible at a later time to make up for effects of anticompetitive activity, and (ii) by the requirement generally that anticompetitive activities are to be nipped in their incipiency.

United States v. Penn-Olin Chemical Co., 378 U.S. 158 (1964); California v. FPC, 369 U. S. 482 (1962); City of Pittsburgh v. FPC, 99 U. S. App. D. C. 113, 237 F.2d 741 (1956).

In light of the unsatisfactory nature of its limited suspension authority under the Federal Power Act (*cf. Texaco*, 377 U.S. at 42), the Commission, if it is of the view that factual questions will have to be resolved before it will be able to determine the appropriateness of rejecting a rate filing, has authority to stay the effectiveness of the filing until those issues are resolved. It is now settled that a utility does not have an "invincible right" to have its

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11/ None of the cases cited by the Commission and Edison is to the contrary. For example, Poller v. Columbia Broadcasting System, Inc., 368 U. S. 464 (1962) and Norfolk Monument Co., Inc. v. Woodlawn Memorial Gardens, Inc., 394 U. S. 700 (1969) (FPC br., pp. 10 ), merely hold that summary judgment cannot issue to preclude litigation of antitrust conspiracy claims where serious questions have been raised in support of the claimed illegality. The issues there, conspiracy and intent, unlike those involved in the instant case, could only be resolved in an evidentiary hearing. The Court held that as a matter of procedure the plaintiffs could not be deprived of their right to have the claimed antitrust violations litigated. As pointed out in the text, these holdings do not reach the questions here presented.

rate filing become effective subject only to a six-month delay and refund liability. Permian Basin Area Rate Cases, 390 U. S. 747, 779 (1968).

The Commission has authority to determine factual questions without a hearing in appropriate cases. In Citizens for Allegan County, Inc. v FPC, 134 U. S. App. D. C. 229, 414 F.2d 1125 (1969), for example, the Commission approved a utility company's acquisition of a municipal electric system without granting an evidentiary hearing to objecting citizens. This Court affirmed ( 414 F.2d at 1129 ):

"We conclude that the information presented to the FPC in the applications, exhibits, affidavits, intervention petition and other pleadings, developed the salient facts of the dispute to a sufficient depth and detail that the Commission was enabled to perceive, define, and resolve the various strands of public interest. It is important that the Commission's opinion addressed itself to each of the problems raised by petitioner and set forth its reasons for concluding that the public interest lay in approval of the merger."

This Court also points out other means of determining factual questions without hearings: (i) it can "provide opportunity to a petitioner to file a memorandum setting forth his position (and proffer) on the issues of fact and

law he deems controlling; (ii) "light without heat may be obtained from an on-the-record conference procedure -- partaking of the nature of a prehearing conference but without notice of hearing -- conducted by a member of the staff or possibly a hearing examiner." ( 414 F.2d at 1134 ).

These techniques could have been utilized by the Commission to make any factual determinations necessary to provide the appropriate remedy for the interim protection of the public interest.

In other words, the Commission has broad authority to provide interim protection to the consumer from onerous terms and conditions, pending final determination. This must be so, since, unlike unjustified rate increases, there is not even the inadequate remedy of refund to protect the customer against lost economic opportunities suffered from unjustified restrictions effective during the interim. The broad Commission authority under Section 309 of the Act, together with the flexibility of Sections 205(d) and 205(e) make possible any of the procedural remedies noted above. The Commission's fundamental

error was its failure to consider its wide scope of authority and to deal realistically with the problem  
12/  
presented.

II

THE COMMISSION'S REFUSAL TO SUSPEND THE EDISON FILING FOR FIVE MONTHS IS REVIEWABLE AND MUST BE SET ASIDE

A. The Commission's Order is Reviewable.

In opposing the Towns' contention that the Commission abused its discretion in suspending the Edison 20% rate increase (with all its other infirmities including the anti-competitive provisions) for but one day rather than the five months provided in Section 205(e) of the Federal Power Act, the Commission (FPC br., pp. 21-25) argues that its action is not reviewable. We had anticipated that the Commission would make such an argument and therefore briefed the jurisdictional question fully in our main brief (Towns' br., pp. 50-55).

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12/ Much of the discussion in the text applied equally to the adequacy of service issue raised by the Towns. Inherent in that contention is the question of whether a utility that admittedly has and will continue to render inadequate service can nevertheless impose a significant rate increase on its customers, although not at all contending that the increase is needed to upgrade service. We submit that a valid legal issue had been raised and that it was incumbent upon the Commission to resolve it -- in an expedited hearing if necessary -- before permitting the increase to go into effect.

In support of non-reviewability, the Commission cites a long -- but nonetheless irrelevant -- string of cases. With the exception of Arrow Transportation Co. v. Southern Railway Co., 372 U. S. 658 (1963), and two lower court cases, each of these cases involved situations where the Interstate Commerce Commission had refused to issue any suspension in connection with a rate filing. The holding of Arrow in this respect is merely that the courts have no equity power to enlarge a suspension period beyond the period <sup>13/</sup> authorized by statute.

More to the point are the cases upholding the reviewability of a suspension order, once initially issued, where the suspension period prescribed is less than that permitted by statute. As emphasized in Atlantic Coast Line Railroad Co. v. United States, 173 F. Supp. 871, 872-3 (E.D., Va., 1958):

"The factual situation presented is closely analogous to those appearing in Amarillo-Borger

<sup>13/</sup> The only two lower court cases which lend any support to the Commission are Oscar Mayer & Co. v. United States, 268 F.Supp. 977 (W.D. Wisc., 1967) and Freeport Sulphur Co. v. United States, 199 F.Supp. 913 (S.D.N.Y., 1961). However, the court in Oscar Mayer was impressed that there had been a failure to exhaust administrative remedies and it recognized that Freeport Sulphur was in conflict with the Amarillo-Borger line of cases upon which we rely (Towns'br., pp. 50-53).

Express v. United States, D. C., 138 F.Supp. 411; Long Island Railroad Company v. United States of America, D. C., 140 F.Supp. 823; and Dixie Carriers, Inc. v. United States of America, D. C., 143 F.Supp. 844. Those cases appear directly in point and we regard the reasoning contained in the opinions as sound.

"While we fully recognize the important principle that the action of the Commission is not subject to review until administrative remedies have been exhausted, that is not the controlling consideration before us. We are not concerned with the power of the Commission to decline to enter a suspension order. The question presented is whether the Commission, once having entered a suspension order, may properly vacate the same without first affording the interested parties a hearing. Involved in this question is whether the action of the Commission in vacating the suspension order is reviewable. For the reasons set forth in the cases cited we hold that it is reviewable."

Plainly the case at bar dealing with a Commission determination that suspension of the rate filing is appropriate but that the suspension should be for only one day rather than the full reach of the statutory authority, is analogous to the situation where a suspension, once issued, is rescinded or curtailed, rather than to the cases where the agency determines that no suspension at all is appropriate.

In this regard, it should also be noted that in many of the cases cited by the Commission, the Court's statement

that the ICC's failure to suspend is not reviewable is based more on substantive, rather than jurisdictional considerations. In other words, the Courts in these instances were actually indulging in a form of shorthand. While the Court's decision is cast in terms of lack of jurisdiction, the Court's holding actually was that the agency's action or inaction vis-a-vis suspension was, in the circumstances there presented, patently within its discretion and hence there was nothing for the Court to review. As the Atlantic Coast line of cases indicate, the Courts have not hesitated to review agency action with respect to suspension when there appears to be a serious possibility that the agency's action involves an abuse of discretion.

In this regard, there also should be noted the silence on the part of both the Commission and Edison with respect to the relevance in this connection of Environmental Defense Fund, Inc. v. Hardin, \_\_\_\_ U. S. App. D. C. \_\_\_\_ . 428 F.2d 1093, (1970); and Medical Committee for Human Rights v. SEC, \_\_\_\_ U. S. App. D. C. \_\_\_. 428 F.2d 1093, (1970) , both cited in our main brief (at pp. 47, 48, 54).

These cases hold that there are degrees of discretion; that the fact that a matter is committed to agency discretion does not mean that its exercise "is \* \* \* thereby placed beyond judicial review"; and hence that notwithstanding the discretionary nature of agency action, judicial review lies to test the propriety of its exercise unless there is an affirmative indication of a Congressional intent to the contrary.

Moreover, as a matter of policy, considerations of finality and orderly procedure require the immediate review of the Commission's failure to suspend for the full statutory period where, at best, the direct consequence of the Commission's action is to permit provisions of questionable validity to become effective -- and thereby subject the Towns to irreparable harm in the interim until the Commission issues its determination in the rate proceeding. In this respect, the instant situation is indistinguishable from the denial of a petition for leave to intervene (see, e.g., Public Service Commission of New York v. FPC, 109 U. S. App. D. C. 289, 284 F.2d 200 (1960), or to a refusal to reject a rate filing (see e.g., Tyler Gas Service Co. v. FPC, 101 U.S. App. D. C. 184,

247 F.2d 590 (1957); Mobile Gas Service Corp. v. FPC,

215 F.2d 883, 885 (CA 3, 1954) aff'd., 350 U.S. 332 (1956)).

14/

B. The Commission Erred in Failing to Suspend the Rate Filing for at Least the Five Months Provided in the Federal Power Act.

As the second arrow to its bow in this regard, the Commission contends that even if its refusal to suspend for five months is reviewable, its action nevertheless was free from error. According to the Commission, it is the Towns who are wrong in urging that the Commission has developed a consistent practice with regard to suspension of rate filings, which was violated by its failure to suspend the instant Edison rate increase for the full statutory period. In this regard, the Commission refers to specific orders and statistics as to other orders which demonstrate, according to the Commission, that in some cases it has suspended rate filings for less than five months and in still other cases it has permitted the tariff filing to go into effect without any suspension. Hence, runs the Commission's thesis, the consistent practice claimed by

14/ The cases cited by Edison (Ed. br., p. 16) in support of its claim on non-reviewability are readily distinguishable. These cases merely hold that a person who files for a rate increase has no judicially cognizable complaint when the Commission suspends the effective date of the increase as authorized by the Natural Gas Act. Cf. Hope Natural Gas Co. v. FPC, 196 F.2d 803 (4th Cir., 1952); Arrow Transportation Co. v. Southern Railway Co., supra, at 662-666.

the Towns is in fact inconsistent.

But these opinions and statistics fall far short of refuting our contention, and indeed miss the point which the Towns were making. The Towns were not claiming that the Commission practice was to suspend all rate or tariff filings irrespective of the surrounding facts. Rather, it is the Towns' position that where a filing involves rate and tariff changes of substantial magnitude, and the Commission cannot conclude from the filing that the proposed rate and tariff changes are just and reasonable, then the Commission practice has been to suspend the proposed change for at least the full statutory period in the absence of special or exceptional circumstances. Such, we submit, is the Commission's holding in Yucca Petroleum Co., 29 F.P.C.211 (1963), quoted at p. 55} in our main brief. And such is the Commission's practice, which the Towns contend is violated by the Commission's action in this case.

The various cases cited by the Commission and included in its statistics are wholly consistent with such a practice. In some of the cases referred to by the Commission, there was no question as to the reasonableness of the filing; in others the rate increase involved was insubstantial; and in still others, good reason had been shown for a shortened suspension period. In none of the cases cited by the Commission or Edison did the Commission depart from the practice as set

out above; in other words, where the case involves rate or tariff changes of a substantial magnitude and the filing leaves questions as to the reasonableness of the proposed change, the Commission has, in the absence of special or exceptional circumstances, consistently suspended the change for the full statutory period. See also dissent of Commissioner Carver (R. 592-593).

That the cases cited by the Commission and Edison do not negate the existence of the practice may be seen from an examination of a few of these cases. For example, in Gulf Oil Corp., 23 F.P.C. 785 (1960) (Ed. br., p. 17), the Commission suspended two of five rate changes for one day: the first involved a rate reduction and the second a slight increase due to an increase in state taxes; the remaining three rate changes, however, were suspended for the full 5-month period. In Florida Gas Transmission Co., 34 F.P.C. 995 (1965), and in Consolidated Gas Supply Corp., 41 F.P.C. 641 (1969) (Ed. br., p. 17), the applicant has established "good cause" justifying suspension for a period shorter than five months. In Public Service Company of Oklahoma, 32 F.P.C. 1396 (1964) (Ed. br., p. 17), the filing involved a rate reduction. And in Georgia Power Co., 32 F.P.C. 1368 (1964) (Ed. br.,

15/ The Commission's brief gives some statistics on the disposal of certain unidentified electric rate increase filings (FPC br., p. 25). The Staff has furnished us the list of proceedings upon which it relies, a copy of which is reproduced as Appendix E hereto. There were some 28 filings not suspended and 4 filings suspended for one day, but these were for small amounts, or without customer objections, or after withdrawal of protests. The only significant rate increase suspended for only one day, over objections of the customers, is the instant Edison rate increase.

p. 17), the problem as to restrictive provision had largely been resolved through negotiations by the time the Commission accepted the filing.

Edison (Ed. br., pp. 18-19), but not the Commission, seeks to urge that the Commission had adequately stated its reasons for the shortened suspension. In this regard Edison (Ed. br., p. 19) points to the statement in the Commission's original order that the:

"\* \* \* proposed increased rates and charges \* \* \* have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful under the Federal Power Act" (R. 87).

But this is the finding which the Commission customarily makes in suspending rate filings of comparable magnitude for the full statutory period. Far from supporting the one-day suspension here ordered by the Commission, this finding calls for the full 5-month suspension under the Commission's consistent practice.

Edison also quotes from the Commission's order of May 26, 1970, to the effect (Ed. br., p. 19):

"\* \* \* any relaxation of our one day suspension period will result in an irretrievable loss to Edison. Furthermore, the increased rates are being collected by Edison subject to refund of any amounts found unjustified at an interest rate of 8%."

But this "irretrievable loss to Edison" is no different from the loss which every regulated company suffers when its rate

increase is suspended as authorized in the applicable statute. Indeed, as pointed out in Arrow Transportation Co. v. Southern Railway Co., 372 U. S. 658 (1963), affirming 308 F.2d 181 (CA5, 1962), Congress anticipated that such company would incur irreparable losses during the suspension period under the legislative compromise embodied in the rate-making scheme provided in the various federal regulatory statutes, including the Federal Power Act. Thus, the Courts have long since recognized (i) that the compromise thus adopted by Congress left some or all of the parties exposed to possible injuries and (ii) that no relief was available therefrom other than through action by Congress. As the Fifth Circuit stated in Arrow Transportation, supra, (308 F.2d at 184):

"Some irreparable injury appears unavoidable in the process of establishing new rates. If the new rates are ultimately determined to be just, reasonable, and lawful, the carriers and that portion of the public which would benefit from the change in rates have nonetheless suffered irreparable injury during the period of suspension. If the period of suspension has expired and the new rate schedule goes into effect, but is subsequently determined to be unlawful, then competing carriers and that portion of the public which would suffer because of the change in rates has been injured during the period when the rates were not suspended and in many cases that injury is irreparable."

See also, Hope Natural Gas Co. v. FPC, 196 F.2d 803, 809 (CA4, 1952).

On the other hand, contrary to the impression which the Commission would leave, it is also well established that

refunds are not adequate to protect the overcharged customers.

FPC v. Tennessee Gas Transmission Co., 371 U.S. 145, 154-56;

FPC v. Hunt, 376 U. S. 515, 524-25 (1964).

Plainly, therefore, the Commission statements relied on by Edison fall far short of adequately explaining the Commission's departure from its established practice.

### III

#### PETITIONERS SUFFERED SUBSTANTIAL PREJUDICE AS A RESULT OF THE COMMISSION'S FAILURE TO COMPLY WITH ITS SIXTY-DAY NOTICE REQUIREMENT

The Towns, and amicus curiae Boston Gas Company, already have briefed fully the fact that the Commission committed reversible error in permitting the Edison filing to become effective in contravention of the 60-day notice requirement of 18 C.F.R. 35.13(b)(4)(i). We desire, at this time, merely to respond to the Commission's contention (FPC br., pp. 29-30) that its non-compliance with that Rule in no way affected Edison's customers.

To so conclude is to ignore the nature of the Edison filing. It does not involve a mere change in rates; rather, as noted by Commissioner Carver in his dissent (R. 593), it "incorporates fundamental changes in rate design and conditions of service." Modifications of this type create problems of redesigning and placing into effect new rates. The 60-day period would have given Edison's wholesale customers some elbow room to accomplish this. It is unreasonable to expect them to anticipate that the Commission would choose, without explanation, to ignore its own procedural requirements.

Clearly, the Towns were prejudiced thus by the premature effectiveness of the Edison filing and certainly they have standing to complain.

IV

CONCLUSION

For the foregoing reasons, as well as those set out in our main brief, the Court should set aside the Commission's order accepting the Edison rate filing and suspending the effectiveness of the proposed rates and conditions for only one day.

Respectfully submitted,

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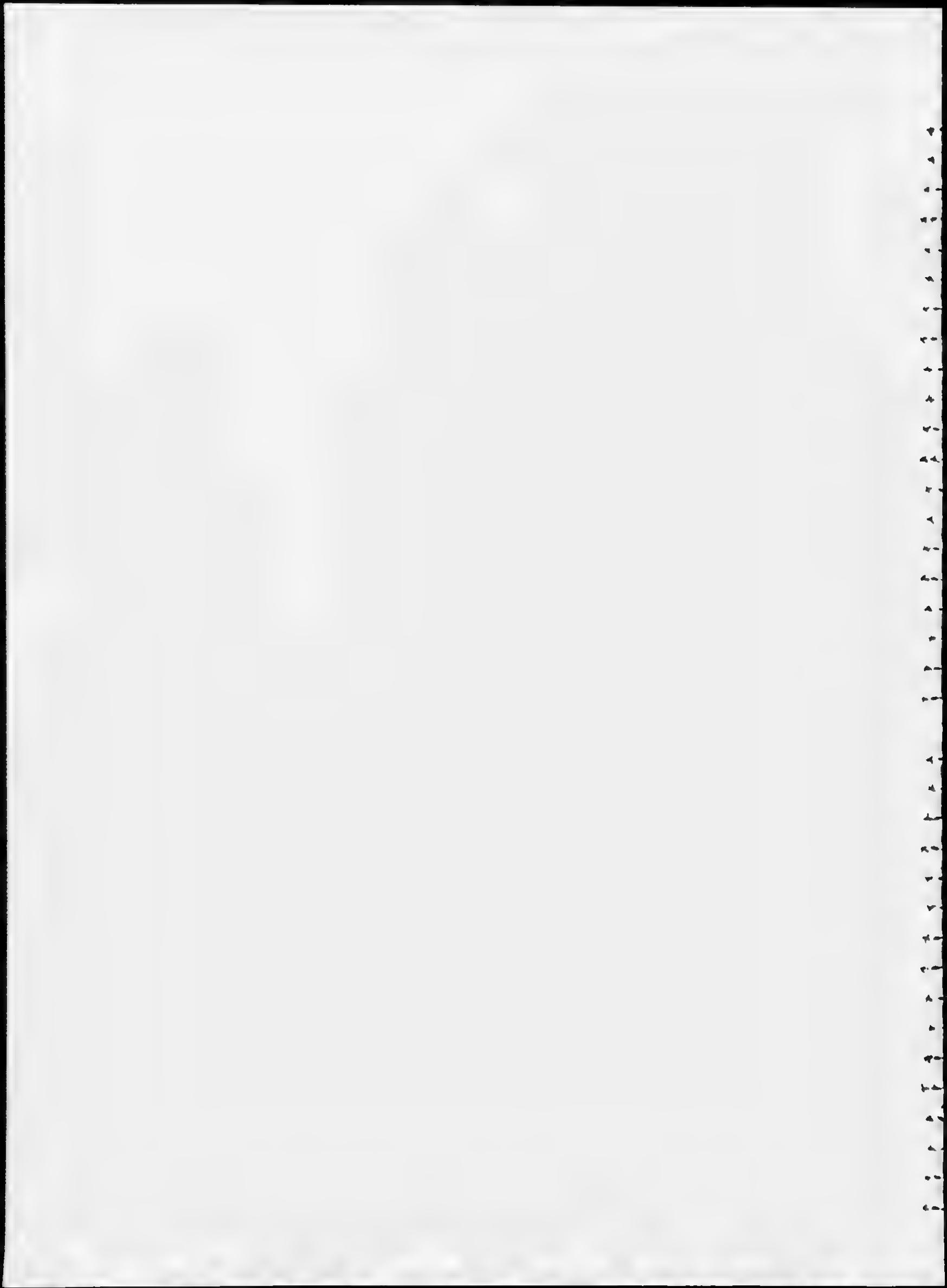
November 9, 1970

16/ Edison suggests that the question of "waiver" of the 60-day Rule need not be considered "since the submission and filing were in substantial compliance with the regulations" (Ed. br., p. 13). That is an interesting -- but irrelevant -- theory. The Commission at no time found "substantial compliance."



APPENDICES

- A. Edison letter to Commission dated August 11, 1966 (2 pages)
- B. Edison letter (with attachments) to Commission dated April 22, 1970 (4 pages)
- C. Excerpts from hearing transcript, Docket E-7400, et al, October 9 and October 14, 1970 (12 pages)
- D. Letters dated October 27, 1970 by Towns of Wellesley and Norwood, Massachusetts to New England Power Company et al; Acknowledgement by New England Power Company to Norwood, dated October 29, 1970 (3 pages)
- E. Commission data re suspensions 1961 - 1964, 1965 through 1971 (fiscal years) (3 pages)



APPENDIX A

BOSTON EDISON COMPANY

August 11, 1966

Mr. J. H. Gutridge, Secretary  
Federal Power Commission  
Washington, D. C. 20426

In reply to: FWR-RC

Dear Mr. Gutridge:

I hereby request an extension of the time within which to submit Boston Edison Company's analysis of its costs of wholesale electric service for resale from August 15, 1966, to October 1, 1966. A review of our study work in progress indicates that one month is necessary to complete the study and two weeks is necessary to have it reviewed by all echelons of top management.

In the paragraphs to follow, I will describe:

1. Our efforts since we received your letter request dated April 15, 1966, and
2. The voluminous data we must accumulate, study, and interpret because:
  - a. Our service to Rate M customers is singularly complex, and
  - b. A determination of the undepreciated investment properly allocable to Rate M customers is very time consuming because the Depreciation Reserve account is not segregated by functional plant accounts.

The F.P.C. request of Friday, April 15th, was received on Wednesday, April 20th, the day after the holiday, April 19th. From April 20th to May 24th, our rate and accounting functions were busy preparing for a rate hearing on Rate M before the Massachusetts Department of Public Utilities scheduled for May 24th. At the hearing on that date, the presentation of exhibits and testimony was deferred to September 8, 1966.

Immediately after April 20th, our Rate Department started to get about 80 circuit maps and station diagrams from the Engineering and Construction Department in connection with the facilities used to supply service to the Rate M customers. These required analyses and summation of data before

Mr. J. H. Gutridge  
Federal Power Commission

-2-

August 11, 1966

requesting costs from the Plant Accounting Department. By working overtime, the Plant Accounting Department has been able to furnish most of the detailed data required. Over 150 typewritten pages of detailed specific plant investment cost data have been prepared. Although good progress is being made, it is impossible to analyze and allocate all of this data by August 15th.

Allocation of costs to serve Rate M customers is difficult because of the complications in the Boston Edison system. As was discussed with the Staff at a meeting in Washington, D.C., August 1, 1966, all of our Rate M customers receive power under various conditions of supply. A detailed analysis of the distribution lines and substations which supply the power to each customer is being made; and, where required, allocations are being made to other customers served from the same facilities.

At the meeting in Washington, August 1, 1966, we suggested a method for segregating the Depreciation Reserve account by functional account classifications. We were furnished a suggested breakdown prepared by the Commission's Staff and asked to review it. We are doing this and will endeavor to meet the Staff's requirements for a reasonable and proper functional allocation. This takes considerable time as we must gather factual data to support our position.

Classifying demand and energy related costs and allocating each to resale and other customers cannot be made until the undepreciated investment by functional account classifications has been completed. We are making every effort to proceed speedily. We are cognizant of the necessity for factual data in the determination of an equitable allocation.

Very truly yours,

Joseph P. Tyrrell

JPT/RMK/vl

US of A  
REUBEN BOSTON EDISON COMPANY  
EXECUTIVE OFFICES  
800 BOYLSTON STREET

APR 27 11 PM '70 BOSTON, MASSACHUSETTS 02199

BEPH P. TYRRELL  
MANAGER AND TELLER

FEDERAL POWER  
COMMISSION

April 22, 1970

Federal Power Commission  
441 G Street, N.W.  
Washington, D.C. 20426

Attention: Mr. Bernard P. Litzel, Chief  
Eastern Region of Audits

Gentlemen:

In accordance with your letter of January 12, 1968,  
Schedule III, Exception No. 5 - Segregation and Functionalization  
of the Accumulated Provision for Depreciation, we have functional-  
ized the reserve for depreciation. We are enclosing a certified  
copy of the journal entry for your records.

We have reviewed all of the other sections of this  
letter and in our opinion all compliance deficiencies have been  
corrected.

Very truly yours,

Jay P. Tyrell

JPT:b

RECEIVED

APR 27 1 11 PM '70

FEDERAL POWER  
COMMISSION

ATTESTATION

Boston, Massachusetts, April 22, 1970

I, Joseph P. Tyrrell, Vice President, Treasurer  
and Chief Accounting Officer of Boston Edison Company, do  
hereby certify that the annexed Journal Entry 1C (April,  
1970) is a true copy of the original entry as it appears  
on the records of this Company.

Joseph P. Tyrrell  
Joseph P. Tyrrell

Subscribed and sworn to before me, this 22<sup>nd</sup> day  
of April, 1970.

Richard J. Russo Notary

W.H.C. 1000

Prepared by \_\_\_\_\_

Entered by \_\_\_\_\_

Dept.

Approved by \_\_\_\_\_

Entered by \_\_\_\_\_

Description	Work Order	Line Item	Amount
Aggregate the December 31, 1979 balance of accumulated provision for Depreciation by categories.	10801	220,100,575 49	98,451,773 00
	10825		19,902,612 00
	10837		89,279,563 00
	10841		5,348,408 00
	10845		5,789,059 00
	11901		1,329,560 49
	12201		

APR 27 / 11 PM '70

FILED  
CONTINUATION

*Cx. tel. Re-*

FEDERAL POWER COMMISSION  
WASHINGTON 20426

~~RECORDED~~

JAN - 5 1970

US of h

NCX COLLECT

Mr. Thomas J. Galligan, President, Boston Edison  
Company, 300 Boylston Street, Boston, Massachusetts  
02112

Reurtel of 12/30/69 time extended to 1/19/70 for  
filing statement of procurement policies and  
procedures pursuant to Order No. 386

Gordon M. Grant, Secretary, Federal Power Commission

SEC:jw

1/5/70

R-345

FEDERAL POWER COMMISSION  
JAN 5 1970  
DISPATCHED

1 BEFORE THE  
2 FEDERAL POWER COMMISSION

4 In the Matter of: :  
5 MUNICIPAL LIGHT BOARDS OF READING :  
6 AND WAKEFIELD, MASSACHUSETTS, : DOCKET NO. E-7400  
7 Complainants, :  
8 -v- :  
9 BOSTON EDISON COMPANY, :  
10 Respondent :  
11 NORWOOD MUNICIPAL LIGHT DEPARTMENT, : DOCKET NO. E-7517  
12 NORWOOD, MASSACHUSETTS, :  
13 Complainant, :  
14 -v- :  
15 BOSTON EDISON COMPANY, :  
16 Respondent, : DOCKET NOS. E-748  
17 and E-7533 :  
18 BOSTON EDISON COMPANY :  
19

Hearing Room "B",  
Federal Power Commission,  
G.A.O. Building,  
441 "G" Street, N. W.,  
Washington, D. C.,  
Friday, 9 October, 1970

20 The above-entitled matter was convened, pursuant to  
21 recess, at 10:00 a.m.

22 BEFORE:

21 ERNEST O. EISENBERG, Presiding Examiner

## 23 APPEARANCES:

25 (As heretofore noted.)

clh73

1 the staff, when. Unless there is some showing of relevance.

2 PRESIDING EXAMINER: Very well. The issue is joined  
3 now, I think we will have to go into it, Mr. Spiegel. Can  
4 you make a further showing of relevance of why the production  
5 of this document is so important?

6 MR. DEBEVOISE: The timing of when it was sent to staff.

7 MR. SPIEGEL: Let me ask a preliminary question, whether  
8 counsel for applicants knew that in April of this year, and  
9 at that time, the company was furnishing a copy of the Jackson  
10 and Moreland report to the staff?

11 MR. HOPSY: May I have the question reread, I couldn't  
12 hear you, Mr. Spiegel.

13 (Question read)

14 MR. DEBEVOISE: I am unable to answer that without  
15 checking my records. I can say this, however, that in the  
16 ordinary course of the rate filing I know that requests were  
17 made directly by the staff not to counsel for the company but  
18 to officers of the company, and information was supplied to  
19 the staff that did not come through counsel. And I suggest  
20 to you that this is true in almost every rate filing matter,  
21 there were no formal parties to the proceeding, staff wanted  
22 information, they would pick up a telephone and they would  
23 ask, in some cases they asked Mr. Kelmon, I think, for  
24 financial data.

25

BEST COPY  
from the original

clh79

And so the answer is of impropriety, I think, it is completely out of place.

MR. SPRINGER: Well, Your Honor, in the formal proceedings on behalf of Reading and Wakefield, we asked to have the filing rejected because the depreciation accounts did not conform to the Commission's regulations as we read them, and counsel for the company replied formally on March 6, 1970, that there was a study underway by Jackson and Moreland and they expected it to be available in the near future.

We assumed in reading that answer that if a copy of that study were furnished to the Commission in the context of the very important issue that was raised, we are talking about an increase in rates of some \$2 million a year --

PRESIDING EXAMINER: Now, may I --

MR. SPRINGER: Am I wrong on that?

PRESIDING EXAMINER: Isn't that really a phase II issue, counsel?

MR. SPRINGER: I just wanted to answer counsel for the applicants. I had not gotten to the relevance yet. What I wanted to point out is that we assumed that the practice I have always assumed that the practice before the Commission was not only well-accepted by all of us, but actually required by law and regulations, that documents of this sort furnished to the Commission also be furnished to parties.

MR. DEBROISE: He has it absolutely wrong. Your Honor

..clhco 1 MR. SPIEGEL: Well, I may be wrong.

2 PRESIDING EXAMINER: I am just going to say I don't regard  
3 this particular dispute as being germane to the Phase I  
4 issues in this proceeding. And I see no point in pursuing  
5 this discussion at this time.

6 Now, if you wish to establish the relevance as to  
7 Phase I of the document or the time of mailing the document  
8 which you are asking the witness to search out for you, I  
9 am ready to hear your explanation.

10 MR. SPIEGEL: Well, that question would have the same  
11 relevancy as to Phase I or Phase II. Either it is relevant  
12 or it is not relevant.

13 In other words, counsel for the applicant has produced tes-  
14 timony, here it is, he says this testimony supports Phase I  
15 and also supports Phase II. And in this testimony he says  
16 that certain documents were furnished to the staff.

17 Now, evidently this supports both Phase I and Phase II.  
18 I am trying to get underneath. This is more in the form of  
19 clarification testimony to find out what he is talking  
20 about.

21 PRESIDING EXAMINER: Well, if I may make my question  
22 a little bit more specific: As I understand the testimony  
23 on page 8 beginning at page 7 with the functionalization of  
24 depreciation, this would seem to involve a financial matter  
25 which would have more direct bearing on the rate increase in

clh81.

1 Phase II than it would have on the conditions to which you  
2 object in Phase I; is that correct?

3 MR. SPIEGEL: That is correct, sir.

4 PRESIDING EXAMINER: It therefore seems to have minimal  
5 relevance to Phase I; is that correct?

6 MR. SPIEGEL: Yes.

7 PRESIDING EXAMINER: I would suggest therefore that  
8 since you have pursued this line of inquiry this far, if  
9 counsel for Boston Edison wishes to cooperate with your  
10 request he may properly do so. If he, however, wishes to  
11 interpose an objection that at this time this is not  
12 relevant, with the understanding that you can resubmit your  
13 request when we get into Phase II, he may do so.

14 MR. SPIEGEL: Well, I don't --

15 PRESIDING EXAMINER: Mr. Debevoise, the decision is  
16 yours to make at this time.

17 MR. DEBEVOISE: I would rather do the latter, Your  
18 Honor.

19 I might say at this time, and this is an attempt  
20 to be helpful -- now, we have tried not to object more than  
21 necessary. I think Mr. Wofsy's motion as to relevance on  
22 the depreciation study was right. We are putting in Phase I  
23 the financial data so that it can be seen what Mr. Hills does  
24 with it by way of allocation. In the Phase I proceeding I  
25 don't believe the levels of the financial data are at issue.

1 cih52 : It is the methods that are applied to them in designing the  
2 rate and making the allocations that affect the terms and  
3 conditions.

4 Now, I am trying to be helpful, maybe I am not?

5 PRESIDING EXAMINER: No, you are being helpful.

6 MR. DEBEVOISE: But the actual level of financial  
7 data I don't think is significant in Phase I, but we have to  
8 have it in so that you can see how it is allocated and  
9 the method of allocation which then does affect the terms  
10 and conditions.

11 PRESIDING EXAMINER: Very well. I will sustain Mr.  
12 Debevoise's objections at this time without prejudice,  
13 counsel, however, to your right to renew your request when  
14 we get into the Phase II aspects of this proceeding.

15 MR. SPIEGEL: I would at this time request that this be  
16 furnished me in connection with Phase II. So if there  
17 is any doubt about it, I am requesting it from applicant's  
18 counsel for Phase II.

19 PRESIDING EXAMINER: Well, this may be premature, but I  
20 do see its relevance with respect to Phase II and I will  
21 honor your request.

22 MR. DEBEVOISE: Well, we will look through our records,  
23 Your Honor, and see what we can come up with.

24 MR. WOPSY: Your Honor, I don't want to just remain  
25 silent here where there may be some innuendos or somebody

VOL. 7

## BEFORE THE

FEDERAL POWER COMMISSION

In the matter of:

MUNICIPAL LIGHT BOARDS OF READING  
AND WAKEFIELD, MASSACHUSETTS,  
Complainants

DOCKET NO. E-7400

1

BOSTON EDISON COMPANY,

**Respondent**

NORWOOD MUNICIPAL LIGHT DEPARTMENT,  
NORWOOD, MASSACHUSETTS, . . .  
Complainant -

DOCKET NO. E-7517

27

BOSTON EDISON COMPANY.

**Respondent.**

DOCKET ICS. E-7485  
and E-7533

BOSTON EDISON COMPANY

Hearing Room "B",  
Federal Power Commission,  
G.A.O. Building,  
441 "G" Street, N. W.,  
Washington, D. C.,  
Wednesday, October 14, 1970

The above-entitled matter was convened, pursuant to recess, at 10:30 a.m.

**BEFORE:**

ERNEST O. EISENBERG, Presiding Examiner

## APPEARANCES:

(As heretofore noted.)

clh38 : start all over again.

2 Were any other drafts received by Boston Edison subsequent  
3 to the April, 1969 draft?

4 A No, sir.

5 Q Then the project was completed March 30, 1970?

6 A That is right.

7 Q Was any question raised with Jackson and Moreland  
8 as to why a project which was to be completed by  
9 September 1, 1968, was not completed until March 20, 1970?

10 A No.

11 Q Now, who reviewed the draft that was received on  
12 April 29, 1969?

13 That is, who from Boston Edison?

14 MR. BRUDER: Your Honor, I object to the continuing line  
15 of questioning on the basis that the witness has really  
16 provided all of the information that he was asked to, and  
17 all of the information that could possibly be relevant,  
18 anyway, and more, to this phase of the case.

19 PRESIDING EXAMINER: Before I rule, Mr. Spiegel, do you  
20 have any justification for that line of questioning?

21 MR. SPIEGEL: I have two more questions here I would  
22 hope to ask.

23 PRESIDING EXAMINER: Would you withhold your objection if  
24 he concludes with two more questions?

25 MR. BRUDER: I think, really, our objection goes to  
relevancy and I am not sure the number of questions has much

clh39 : to do with relevancy.

2 PRESIDING EXAMINER: I don't see the relevance of this  
3 line fo questioning, Mr. Spiegel. I will sustain the objection.

4 MR. SPIEGEL: The other question I was going to ask for  
5 the record was whether the draft was communicated to the  
6 Federal Power Commission staff.

7 MR. DRUDER: Your Honor, we object to the question. I  
8 think it is perfectly clear now that counsel is using this  
9 proceeding in some way -- I suppose he hopes to use it in  
10 this Court of Appeals case.

11 PRESIDING EXAMINER: Objection sustained.

12 BY MR. SPIEGEL:

13 Q Have you had an opportunity to check whether Edison  
14 has made any factual studies concerning the lag between  
15 the time it receives bills for fuel and purchased power and the  
16 time when it makes payment to its suppliers? Actual studies  
17 or actual facts?

18 A No, I have not, sir.

19 Q Thank you.

20 Is that a matter which is of concern to financial  
21 people?

22 A Yes, it is.

23 Q Have you been able to locate any memoranda, written  
24 memoranda, of the meetings which were held to discuss the  
25 preparation of the terms and conditions of the rate S-1?

clh86 : BY MR. SPIEGEL:

Q I would address your attention to page 6 of your prepared testimony, lines 13 through 15. You state, "The Commission staff indicated that Edison should functionalize accumulated depreciation to comply with Commission's requirements."

My recollection of your answer was that you said this happened in 1966.

A That is correct. Orally a request was made at the completion of the audit of the years '64 and '65, and that oral request was made in '66.

Q Then is it your testimony that the first written request you got was the one in January of 1968?

A That is correct.

Q Did you receive a letter of August 11, 1967, from the Federal Power Commission signed by John F. Utley, chief accountant?

A Not that I recall, we may have.

MR. WOPSY: Your Honor, I wonder if there is any real significance to delving into the various letters that have been sent to the company with reference to this issue.

PRESIDING EXAMINER: I don't see any relevance at this time, honestly.

MR. SPIEGEL: The problem is I would like to have an accurate record.

clh87

1 PRESIDING EXAMINER: I am sure we will have an accurate  
2 record on this matter before we conclude this hearing.  
3 But I don't think it is appropriate at this time. I see  
4 no relevance, frankly, between the issues which have been raised  
5 in Phase I and this detailed questioning of the witness with  
6 respect to this depreciation matter. I have asked you  
7 repeatedly to demonstrate the relevance of this, and if there  
8 is any I can not see it at this time.

9 MR. SPIEGEL: Your Honor, it is for you to rule. I  
10 have tried to explain as best I can. I thought the  
11 subject had been put to sleep. I received adverse rulings  
12 and then I heard the redirect examination when he opened the  
13 subject to clarify it. Now, I am trying to clarify it to see  
14 if we are getting truthful answers.

15 PRESIDING EXAMINER: Is that the only purpose for the  
16 cross-examination?

17 MR. SPIEGEL: I am trying to get a complete record.

18 PRESIDING EXAMINER: May I suggest, then, counsel, you  
19 may resume this line of cross-examination with this particular  
20 witness when we get into Phase II of this proceeding. But  
21 I do not believe this is the appropriate time to go into  
22 any protracted examination on this point.

23 MR. SPIEGEL: Well, is that your ruling?

24 PRESIDING EXAMINER: Yes, that is my ruling. I will  
25 entertain other questions that deal more directly with the

clh83 1 issues in Phase I.

2 MR. SPIEGEL: I tried to make a complete record of the  
3 communications between the Commission staff and the  
4 company on the subject of depreciation reserves. That is  
5 what I tried to do, and now we have your ruling on it.

6 BY MR. SPIEGEL:

7 Q From a financial point of view, Mr. Kelmon, is it  
8 significant to Boston Edison and your Department, whether  
9 a system power sale is made as distinguished from a firm  
10 power sale?

11 A From a financial point of view I would have to know  
12 a little bit more of the specifics, and I can't rely as I sit  
13 here on the definitions alone.

14 PRESIDING EXAMINER: For the purposes of clarification,  
15 would counsel wish to define what you mean by the 2 terms  
16 you have just used, systems power as against firm power?

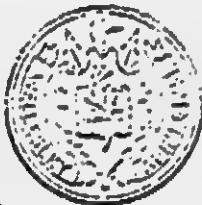
17 MR. SPIEGEL: Well, no. I was merely picking it up from  
18 the redirect examination, and I thought counsel asked him  
19 about system powers.

20 PRESIDING EXAMINER: Well, the term is used in one of  
21 their exhibits, or one of the exhibits offered. But I think  
22 it would help the Examiner to follow the questioning if defini-  
23 tions were offered.

24 MR. SPIEGEL: Well, this is a Boston Edison term as  
25 far as I know. If he doesn't know what it means, I suppose  
that is about as far as we can go with it.

APPENDIX D

TOWN OF WELLESLEY  
WELLESLEY, MASSACHUSETTS 02181



COMMISSIONERS  
JAMES A. MORTON, CHAIRMAN  
WALTER AMORY  
DAVID L. DABSON  
  
SUPERINTENDENT  
EVERETT R. KENNEDY

BOARD OF PUBLIC WORKS

October 27, 1970

New England Power Company et al  
Offering Sponsors of Maine Yankee Power  
c/o Richard B. Dunn, Agent  
Room 221, Turnpike Road  
Westboro, Massachusetts 01581.

COPY

Dear Sirs:

The Town of Wellesley, Municipal Light Department, advises it is interested in the offer for its entitlement in Maine Yankee power but is unable to accept the offer at this time because of its inability to negotiate a partial requirement service, backup and wheeling charges from its supplier, Boston Edison Company.

We are continuing our discussions with our present supplier relative to the foregoing subject matter and we would like to be apprised of your progress in these projects.

Very truly yours,

A handwritten signature of Everett R. Kennedy.

Everett R. Kennedy  
Manager, Municipal Light Department

ERK/m

cc: Charles F. Wheatley, Jr., Esq.



# The TOWN OF NORWOOD

Commonwealth of Massachusetts

GENERAL MANAGER  
WALTER A. BLASENAK

October 27, 1970

RECEIVED

OCT 30 1970

EOR

New England Power Company et al.  
Offering Sponsors of Maine Yankee Power  
c/o Richard B. Dunn, Agent  
Westboro, Massachusetts 01581

Dear Sirs:

The Town of Norwood Municipal Light Department advises it is interested in the offer for its entitlement in Maine Yankee Power, but is unable to accept the offer at this time because of its inability to negotiate a partial requirement service, backup and wheeling charges from its supplier, Boston Edison Company.

We are continuing our discussions with our present supplier relative to the foregoing subject matter and we would like to be apprised of your progress in these projects.

Very truly yours,

TOWN OF NORWOOD

*Walter A. Blasenak*

Walter A. Blasenak  
General Manager

RAB:ig

cc: Vincent C. Sullivan  
Charles F. Wheatley ✓  
Walter J. Gotovich  
William J. Kates

20 TURNPIKE ROAD, WESTBORO, MASS. 01581

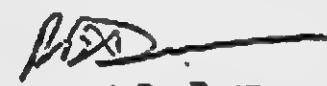
October 29, 1970

Mr. Walter A. Blasenak, General Manager  
Norwood Municipal Light Department  
Norwood, Massachusetts 02062

Dear Mr. Blasenak:

This will acknowledge receipt on the above  
date of your refusal of the offer of Maine Yankee Power.

Very truly yours,

  
Richard B. Dunn

## **APPENDIX E**

5-10 - will

FURNISHED INCREASES			
<u>Period of Disposition</u>			
FY 1961	None	5 months	
1962	Southern California Edison Company Wisconsin-Michigan Power Company	5 months	
	Total	<u>366,000</u>	
1963	None	1 day	
1964	Utah Power and Light Company Narragansett Electric Company	5 months	(Annual Report rounded figure out to \$547,000)

NONBANKING PUBLIC ELECTRIC UTILITIES

<u>Year</u>	<u>Company</u>	<u>Amount Requested</u>	<u>Accepted For Filing</u>	<u>Amount Withdrawn</u>	<u>Amount Suspended</u>	<u>Period of Suspension</u>
1965	Michigan Power & Light Co.	\$ 47,605	\$ 47,605	\$ -	\$ -	
	Central Hudson Gas & Elec. Co.	1,275	1,275			
	Consolidated Edison Co.	4,000				
	Mississippi Power & Light Co.	41,305	41,305			
	Massachusetts Electric Co.	501,600	91,200	410,400		
	Niagara Mohawk Power Corp.	287,500	287,500			
	Pacific Gas & Electric Co.	375,300	375,300			
	Utah Power & Light Co.	13,600	13,600			
	Wisconsin Michigan Power Co.	216,500	185,900			
	<b>Total FY</b>	<b>\$1,491,635</b>	<b>\$1,050,855</b>	<b>\$410,400</b>	<b>\$ 30,600</b>	
1966	Arizona Public Serv. Co.	\$ 32,803	\$ 32,803	\$ -	\$ -	
	Arkansas Power & Light Co.	9,735	6,661	3,124		
	Brazos River Authority	6,000	6,000			
	Central Hudson Gas & El. Co.	356	356			
	Commonwealth Edison Co.	279	279			
	Mississippi Power & Lt. Co.	8,993	8,993			
	Niagara Mohawk Power Corp.	826	826			
	<b>Total FY</b>	<b>\$ 59,152</b>	<b>\$ 55,929</b>	<b>\$ 3,124</b>	<b>\$ -</b>	
1967	Duke Power Company	\$ 2,037	\$ 2,037	\$ -	\$ -	
	Niagara Mohawk Power Corp.	90,939	90,930			
	Public Serv. Co. of Ind., Inc.	265	265			
	<b>Total FY</b>	<b>\$ 93,241</b>	<b>\$ 93,241</b>	<b>\$ -</b>	<b>\$ -</b>	
1968	The Empire District El. Co.	\$ 2,583	\$ 2,488	\$ -	\$ -	
	Iowa Electric Lt. and Pr. Co.	1,343	1,343			
	Iowa Power and Light Co.	1,556	1,556			
	Niagara Mohawk Power Corp.	505	505			
	Public Serv. Co. of Oklahoma	39,207	39,207			
	<b>Total FY</b>	<b>\$ 45,201</b>	<b>\$ 45,201</b>	<b>\$ -</b>	<b>\$ -</b>	

INCREASES IN RIMTALE ELECTRIC RATES

<u>FY</u>	<u>Company</u>	<u>Amount Requested /Found</u>	<u>Accepted For Filing</u>	<u>Amount Withdrawn</u>	<u>Amount Suspended</u>	<u>Period of Suspension</u>
1969	Carolina Power & Lt. Co.	\$ 487,214	\$ 487,214	\$ 487,214	\$ -	-
	Connecticut Lt. & Ry. Co.	10,399	10,399	-	-	-
	The Empire Dist. El. Co.	3,072	3,072	-	-	-
	Georgia Power Company	105,500	106,500	-	-	-
	Public Serv. Co. of N.H.	385,200	385,200	-	-	-
	South Carolina El & Gas Co.	169,304	-	109,304	-	-
	Southern Indiana Gas & El. Co.	132,274	-	-	132,274	5 months
	<b>Total FY</b>	<b>\$1,233,953</b>	<b>\$ 505,171</b>	<b>\$ 596,518</b>	<b>\$132,274</b>	
1970	Arizona Public Serv. Co.	\$ 541	\$ 541	\$ -	\$ -	-
	Central Hudson Gas & El. Co.	737	737	-	-	-
	Duke Power Company	1,651,095	1,651,095	-	-	-
	Orange and Rockland Util. Inc.	533,070	538,070	-	818,889	5 months
	Union Electric Company	818,889	-	-	2,733,000	1 Day
	Boston Edison Company	2,733,000	-	-	-	
	<b>Total FY</b>	<b>\$5,742,302</b>	<b>\$ 539,398</b>	<b>\$1,651,095</b>	<b>\$3,551,889</b>	
1971	Wisconsin El. Pr. Co.	\$ 312,410	-	-	\$ 312,410	5 months
(Excl. 3-31-'70)	George P. Co.	12,220,000	-	-	12,220,000	5 months
	Black Hills Pr and Lt Co	893	\$ 898	-	\$ 898	5 months
	Niagara Mohawk Pr Corp	19,152	19,152	-	-	5 months
	New England P. Co (Suspended - No figure at this time)	-	-	-	-	
	<b>Total FY</b>	<b>\$12,552,460</b>	<b>\$ 20,050</b>	<b>\$12,532,410</b>	<b>\$12,532,410</b>	

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION/18 CFR 2.56 (g)7One Day Suspension )  
Period ) Docket No. R-407

## NOTICE OF PROPOSED RULEMAKING

(November 6, 1970)

Notice is hereby given pursuant to 5 U.S.C. 553 and Sections 4 and 16 of the Natural Gas Act (15 U.S.C. 717c, 717o) that the Commission proposes to amend Section 2.56, in Part 2, General Policy and Interpretations, Chapter I, Title 18 of the Code of Federal Regulations, to establish as a matter of general policy that the Commission will suspend for only one day a change in rate filed by an independent producer under Section 4(d) of the Natural Gas Act (15 U.S.C. 717c(d)) if the Commission decides to suspend such rate change under Section 4(e) of the Act (15 U.S.C. 717c(e)). The Commission, however, would reserve the right to impose a longer suspension period if such action is deemed necessary in a particular situation.

In the past the Commission generally has suspended for five months independent producer rate increases which exceed the applicable area increased rate ceiling set forth in the Statement of General Policy No. 61-1, as amended (18 CFR 2.56 (a)). However, the Commission has authorized a lesser suspension period, usually one day, where special equitable considerations indicated that a five month suspension was not justified.

The Commission under Section 4(e) of the Act has the discretionary power to suspend a proposed rate change for a period not in excess of five months. Independent producers are at a disadvantage when their increases are suspended for five months because they are limited by contract as to when they may make an increase effective. Furthermore, where a

proposed rate change is ultimately determined to be just and reasonable, the effect of a five month suspension period is to deprive an independent producer of revenues to which it would otherwise be entitled. We thus believe that as a matter of general policy independent producer rate changes should be suspended for only one day.

For the same reasons, we also propose to modify outstanding suspension orders so that the suspension periods provided therein will expire as of the effective date of a Commission order adopting the amendment proposed in this notice of rule-making or as of one day from the date a proposed change would otherwise become effective in the absence of suspension, whichever is later.

Producers are also under a disadvantage when they operate under temporary certificates containing a condition which prohibits any contractually authorized increased rate filing above the initial rates authorized therein. Such a condition precludes a producer from collecting a just and reasonable rate during the period of temporary authorization if the just and reasonable rate for such sale is eventually determined to be higher than the initial rate authorized under the temporary certificate. We therefore propose to waive these conditions in existing temporary certificates. 1/

- 
- 1/ The Commission has previously waived conditions in temporary certificates with respect to producer sales in the Hugoton-Anadarko area so as to permit them to file for rates not in excess of the ceilings prescribed in Opinion No. 586. The Commission has also established just and reasonable rates for sales in the Appalachian and Illinois Basin areas and imposed a moratorium on filings in excess of the rates established there. The Commission has also waived conditions in temporary certificates with respect to producer sales in Southern Louisiana, thus permitting producers there to file for any contractually authorized rate increase. Consequently, any action taken herein would not include the Hugoton-Anadarko area, the Appalachian and Illinois Basin areas, or the Southern Louisiana area.

If an order is issued adopting the one day suspension policy proposed in this rulemaking, we intend by separate order issued concurrently therewith to modify outstanding suspension orders and temporary certificates in the manner set forth above. Those interested persons who make written submissions with respect to the proposed rulemaking may also submit therein data, views, comments and suggestions concerning these other proposed actions.

The proposed amendment to Section 2.56 would be issued under the authority granted the Commission by the Natural Gas Act, particularly Sections 4 and 16 (52 Stat. 822, 830; 76 Stat. 72; 15 U.S.C. 717c, 717e).

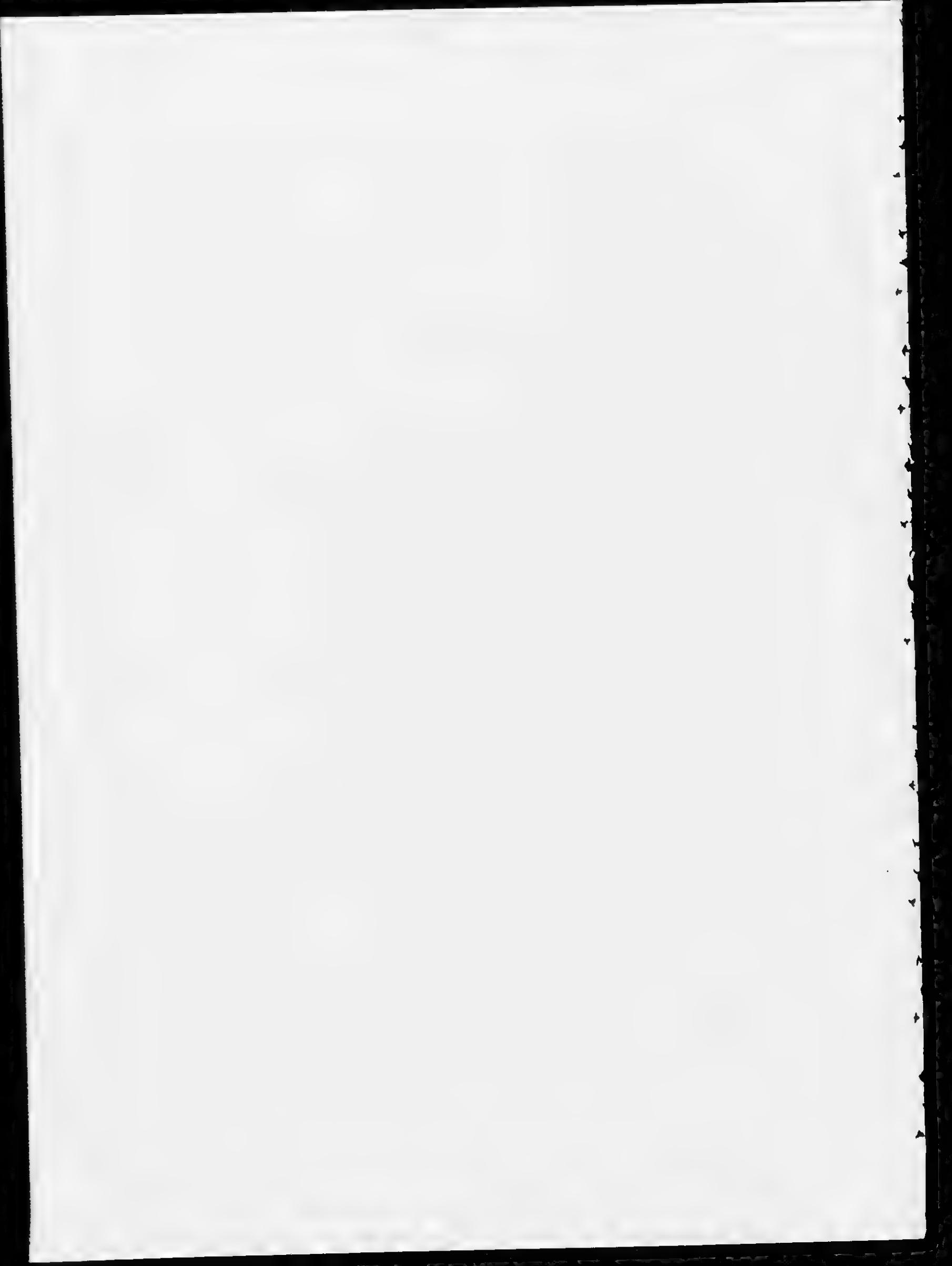
Any interested person may submit to the Federal Power Commission, Washington, D. C., 20426, not later than December 21, 1970, data, views, comments or suggestions, in writing, concerning the proposed amendment to the General Rules. An original and fourteen conformed copies should be filed with the Commission. Submissions to the Commission should indicate the name, address, and telephone number of the persons to whom correspondence in regard to the proposal should be addressed, and whether the person filing them requests a conference at the Federal Power Commission to discuss the proposed amendment. The Commission will consider all such written submissions before acting on the amendment herein proposed.

Accordingly, the Commission proposes to amend Section 2.56, in Part 2, General Policy and Interpretations, Chapter I, Title 18, of the Code of Federal Regulations, by adding a new paragraph (g) to read as follows:

**Section 2.56 Area price levels for natural gas sales by independent producers.**

\* \* \* \* \*

(g) If the Commission decides to suspend a rate change filing made by an independent producer under Section 4(d) of the Natural Gas Act, the suspension period as a matter of general policy



will be limited to one day from the expiration of the 30 day statutory notice period or one day from the proposed effective date, or one day from the date of initial delivery, whichever is later. The Commission, however, reserves the right to waive the 30 day statutory notice period or to impose a longer suspension period if such action is deemed necessary.

The Secretary shall cause prompt publication of this notice to be made in the Federal Register.

By direction of the Commission.

Gordon M. Grant,  
Secretary.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA COURT

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No. 24450

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Municipal Light Boards of  
Reading and Wakefield, Massachusetts,  
Petitioners,  
v.

Federal Power Commission,  
Respondent.

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BRIEF AMICUS CURIAE ON BEHALF OF THE  
TOWNS OF CONCORD, NORWOOD AND WELLESLEY,  
MASSACHUSETTS IN SUPPORT OF PETITION FOR REVIEW  
OF AN ORDER OF THE FEDERAL POWER COMMISSION

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September 28, 1970

*Nathan J. Paulson*  
CLERK

Attorneys for Petitioners

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 24450

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Municipal Light Boards of  
Reading and Wakefield, Massachusetts,  
Petitioners,

v.

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BRIEF AMICUS CURIAE ON BEHALF OF THE  
TOWNS OF CONCORD, NORWOOD AND WELLESLEY,  
MASSACHUSETTS IN SUPPORT OF PETITION FOR REVIEW  
OF AN ORDER OF THE FEDERAL POWER COMMISSION

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Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, the Towns of Concord, Norwood and Wellesley, all political subdivisions of Massachusetts, submit this Brief Amicus Curiae in support of the Petition for Review of Orders of the Federal Power Commission, specifically orders dated April 29, May 26 and June 26, 1970 which accepted for filing a challenged rate increase and suspended it for only one day, filed by the Municipal Light Boards of Reading and Wakefield, Massachusetts seeking this Court's remand of the subject proceeding to the Commission with instructions that it refuse to accept the Boston Edison rate filing or, at a minimum that the Commission be directed to suspend the Edison filing for the statutory five-month period.

INTEREST OF AMICUS CURIAE

The Municipal Light Boards and Departments of the Towns of Concord, Norwood and Wellesley (Municipalities) joining in this Amicus Brief to the Court each own and operate municipal retail electric distribution systems providing total service within their communities. The sole source of power for their distribution systems is from the respondent, Boston Edison Company (Edison).

The wholesale rates charged by Edison for power delivered to the Municipalities are paid directly by the amici and dictate to a substantial degree the retail price to the individual consumers served by their systems. The Commission's order accepting the Rate S-1, levied only against wholesale customers most of which are municipalities, for filing as of April 30, 1970 and directing that its suspension be for only one day, thereafter (May 1, 1970) to be effective subject to refund, with interest, has the effect of immediately increasing the cost of power to the municipalities by approximately 20%, a combined total of approximately \$794,615 per annum.

The amount of the rate increase approximates the 1969 retained net operating income of the municipalities of Norwood and Wellesley and exceeds the income of Concord.<sup>1/</sup> In this context, the Commission's one-day suspension creates a situation of immediate hardship on the Towns and their consumers. If the Commission had followed its long-established practice in major rate increase cases

<u>1/</u>	<u>Excess:</u> <u>Revenues Over Payments in Expenses</u>	<u>1969</u> <u>Lieu of Taxes</u>	<u>Rate S-1:</u> <u>Net retained Increase, 12 mos. ending Mar. 31, 1970</u>
Norwood	408,254	00	408,254 357,486
Concord	246,287	80,315	165,972 187,485
Wellesley	284,594	00	283,594 249,644

and suspended the rate for the statutory five-month period, the communities would have had time to properly plan for and advise their citizens of the projected rate increase to avoid financial loss.

The impact of the one-day suspension is particularly severe on the Town of Norwood. Norwood is currently engaged in a \$3 million capital program to convert from 14 kv service to 115 kv in 1970.<sup>2/</sup> The Town at its Annual Town Meeting held prior to the Commission's order approved issuance of the bonds for this conversion on the basis of the rate savings which would accrue to Norwood under the then applicable N-1 rate (115 kv) over the M rate (14 kv). Edison accepted Norwood's application for service on the rate saving basis and at no time prior to Norwood's undertaking of substantial financial commitment indicated that it planned to alter its rate design or conditions of service. The new S-1 rate erases the savings which motivated the Town to approve the tremendous capital expenditures necessary for conversion to 115 kv service. Given the circumstances surrounding the funding of the conversion, the one-day suspension did not permit Norwood to readily obtain Town approval to adjust its retail rates thereby passing the rate increase on to its consumers. Such an adjustment would be particularly difficult because upon completion of the Town's new 115 kv facilities later in 1970, another adjustment would be required. Accordingly the rate increase now in effect under the new S-1 rate results in an irreparable loss to the Town of Norwood. The usual five-month suspension period would have given Norwood the opportunity to win Town approval, coordinate the new S-1 rate with the Town's conversion project to 115 kv service and avoid debilitating financial losses.

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<sup>2/</sup> Wellesley is already committed to a \$1.3 million general distribution system upgrading which increases the financial pressure placed upon it by this increase. Wellesley and Concord have put into effect higher rights to their customers reflecting the Edison wholesale rate increase. Norwood has not.

By refusing to suspend the Edison rate filing for the customary five-month period, the Commission acted contrary to existing precedents and in arbitrary abuse of its discretion to the prejudice and detriment of the amici.

#### REASONS FOR GRANTING THE PETITION

The municipalities in every respect adopt the legal arguments advanced by Reading and Wakefield in support of their Petition to this Court as expressed in their Brief.

Following is a re-emphasis of pertinent points:

I. Orders Granting Suspension and Refusing to Extend the Period of Suspension Are Reviewable.

The mere fact that the granting of denial of a suspension requires the exercise of Commission discretion does not render an order non-reviewable <sup>3/</sup> nor does an order have to be the final order of the proceeding to be reviewable. <sup>4/</sup> Reviewability is determined by the intrinsic nature of the order and its impact in practice upon the business under regulation not by any tag or label affixed to the order. <sup>5/</sup> The impact of the order denying suspension in excess of one day, as demonstrated in the "Interest of Amicus Curiae" supra, is clearly to place the municipalities, not Edison, as recognized by Commissioner Carver in his dissent (R.593), in the position of irreparable loss.

3/ Amarillo-Borger Express v. United States, 138 F. Supp. 411 (N.D. Tex. 1956), vacated as moot, 352 U. S. 1028 (1957).

4/ See Public Service Comm'n of New York v. Federal Power Commission, 109 U. S. App. D.C. 289, 284 F.2d 200 (1960).

5/ Columbia Broadcasting System v. United States, 316 U.S. 407(1942); United States v. Storer Broadcasting Company, 351 U.S. 191 (1955).

II. Precedent Demands That the Full Five-Month Suspension Period Be Granted.

The Commission by practice has transformed the statutory discretion conferred by section 205e of the Federal Power Act to suspend a rate filing for up to five months into an automatic grant of a five-month suspension <sup>6/</sup> unless good cause supports the limited suspension. <sup>7/</sup> Since the Commission has traditionally consistently granted a five-month suspension period which is well known to the industry, the net result of the order was a five-month windfall to Edison. Commissioner Carver, in his dissent, discredits the applicability of "good cause" as a rationale for an abbreviated suspension period to these proceedings. The Commissioner recognized that these proceedings clearly fell into the class which warranted a full five-month suspension period. He took the position that the impact of a limited suspension on the municipal distributors appeared to be far more severe than the impact of a five-month suspension on Edison:

The impact of an unanticipated cost increase will fall most heavily on municipal distribution systems. By the very nature of their operations, such entities maintain narrower financial reserves and have less flexibility to change retail rate structures on short notice. (R.593)

The Commission has neither adequately explained its departure from the prior norms relating to suspensions nor established the legal rationale for its departure from these norms. This Court therefore has no alternative but to set aside the Commission's action as arbitrary.

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6/ See Texaco, Inc. v. Federal Power Commission, 412 F.2d 740 (3d Cir. 1969).

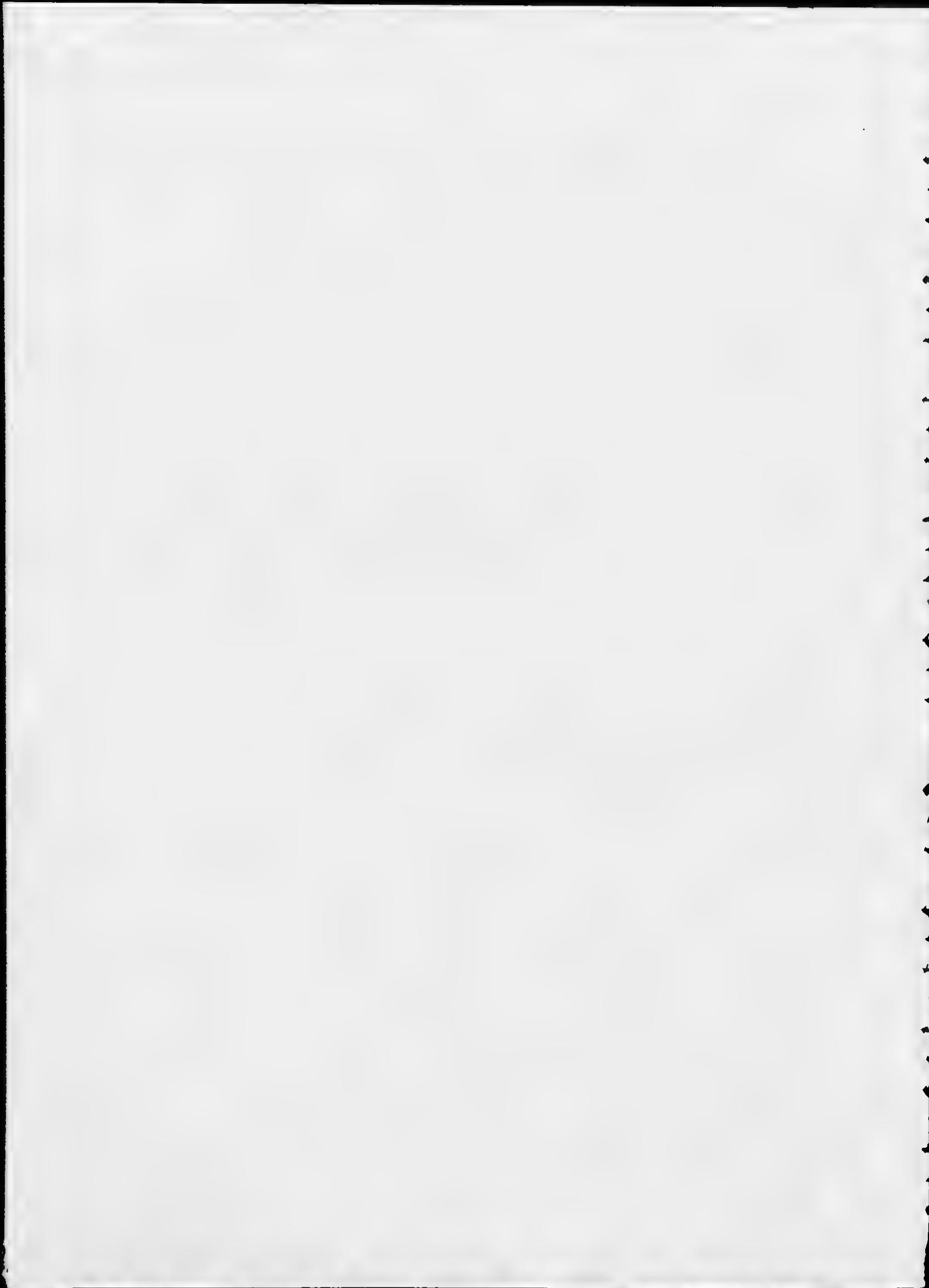
7/ Yucca Petroleum Company, 29 F.P.C. 211 (1963).

III. The Actual Operation of the Refund Procedure Renders the Protection It Affords to the Consumer Illusory.

The illusory nature of the refund process was recognized by the Supreme Court in FPC v. Hunt, 376 U.S. 515 (1964). The Court observed that:

True, the exaction would have been subject to refund, but experience has shown this to be somewhat illusory in view of the trickling down process necessary to be followed, the incidental cost of which is often borne by the consumer, and in view of the transient nature of our society which often prevents refunds from reaching those to whom they are due. (376 U.S. at 524-525.)

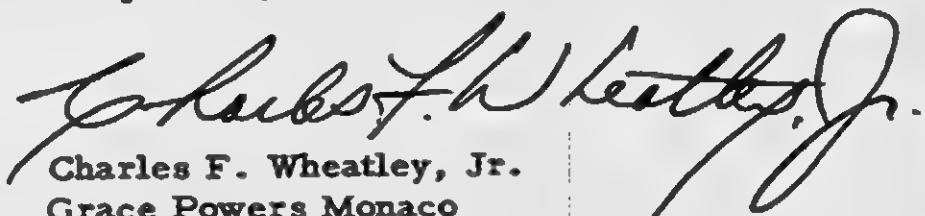
The practical inefficiency of the refund procedure, re achieving the goals of customer protection, -- reaching the consumers placed out of pocket by excessive rates, -- may be avoided if a five-month suspension period permits the parties affected and the Commission to work out a reasonable rate. Moreover the refund procedure does not protect the Towns as in the case of Norwood from out-of-pocket losses resulting from their inability as a legal and practical matter to pass the increased rates on to their consumers in less than the five months period set forth in the statute and traditionally followed by the Commission.



CONCLUSION

WHEREFORE, for the reasons stated in the above portions of this Amicus brief, and stated in the brief submitted by Reading and Wakefield, the above-named municipal systems respectfully request that this Court review the challenged orders of the Federal Power Commission and remand the proceeding to the Commission with instructions to refuse to accept the rate filing or to amend its order to permit the full five-month rate suspension.

Respectfully submitted,



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September 28, 1970

Attorneys for Petitioners

**BRIEF FOR BOSTON GAS COMPANY, AMICUS CURIAE**

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 24, 450

Municipal Light Boards of  
Reading and Wakefield, Massachusetts

Petitioners,

v.

Federal Power Commission,

Respondent.

**ON PETITION FOR REVIEW OF ORDERS OF THE  
FEDERAL POWER COMMISSION**

United States Court of Appeals  
for the District of Columbia Circuit

FILED SEP 29 1970

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IN THE  
UNITED STATES COURT OF APPEALS  
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Reading and Wakefield, Massachusetts,

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BRIEF FOR BOSTON GAS COMPANY, AMICUS CURIAE

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Boston Gas Company, a Massachusetts corporation engaged,  
inter alia, in the sale of electricity at retail in the Charlestown section  
of Boston, Massachusetts, is filing this amicus brief in support of that

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portion of the Petition for Review filed in this case by the Municipal Light Boards of Reading and Wakefield, Massachusetts ("Reading and Wakefield") which contends that the Federal Power Commission acted in violation of law, in suspending for only one day the major wholesale rate increase of Boston Edison Company, Boston Gas' principal supplier of electric power. For the reasons set forth below, and at pages 50-64 of the brief filed by Reading and Wakefield, Boston Gas believes this action of the Commission is reviewable by the Court, and that on such review must be set aside, regardless of this Court's conclusions as to Reading and Wakefield's additional contention that the Commission was required to reject the Boston Edison rate increase filing, a contention as to which Boston Gas expresses no view.

1. The basic and undisputed fact about the one day suspension which the Commission ordered here is its patently discriminatory nature. It is the sole instance in recent years in which a major general increase in the wholesale rates of either a natural gas company under the Natural Gas Act or a public utility under

portion of the Petition for Review filed in this case by the Municipal Light Boards of Reading and Wakefield, Massachusetts ("Reading and Wakefield") which contends that the Federal Power Commission acted in violation of law, in suspending for only one day the major wholesale rate increase of Boston Edison Company, Boston Gas' principal supplier of electric power. For the reasons set forth below, and at pages 50-64 of the brief filed by Reading and Wakefield, Boston Gas believes this action of the Commission is reviewable by the Court, and that on such review must be set aside, regardless of this Court's conclusions as to Reading and Wakefield's additional contention that the Commission was required to reject the Boston Edison rate increase filing, a contention as to which Boston Gas expresses no view.

1. The basic and undisputed fact about the one day suspension which the Commission ordered here is its patently discriminatory nature. It is the sole instance in recent years in which a major general increase in the wholesale rates of either a natural gas company under the Natural Gas Act or a public utility under

the Federal Power Act, has been suspended for only one day.<sup>1/</sup>

Nor is this a situation in which the Commission has chosen a particular rate filing to initiate a general change of policy (an action which, in our opinion, in the absence of advance notice and appropriate proceedings, would also raise serious legal <sup>2/</sup> questions). For the Commission, subsequent to its action

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1/ The situations in which the Commission has suspended rate filings for less than five months because they involved only the "tracking" of previously filed rate increases of a supplier, or were otherwise tied to other pending proceedings, are clearly distinguishable. So is the action of the Commission suspending for one day only a Boston Edison rate filing seeking to terminate a special provision of its wholesale rate schedule applicable solely to Boston Gas. See Boston Edison Company, Docket No. E-7485, Order of March 27, 1970.

The only case we have been able to discover in the last decade, which is even arguably analogous to the present one, involves an Order of the Commission issued September 30, 1963 in Utah Power and Light Company, Docket No. E-7127, 30 F.P.C. 885. There, over the objections of two Commissioners, the Commission suspended for five days a rate increase to seventeen of Utah's wholesale customers which would have made the Company's rates to those customers equivalent to those already applicable to its fifteen other wholesale customers under an initial, non-suspendable filing. While the Commission majority did not explain the reason for its action, it may have believed that it was justified in order to avoid any disparity between the rates charged the two groups of wholesale customers while its investigation into the propriety of all of Utah's wholesale rates was in process.

2/ In such a situation, we would suggest, the uniform prior practice constituted a de facto rule which could not be abandoned or changed without complying with the governing provisions of Section 4 of the Administrative Procedures Act. See Texaco, Inc. v. Federal Power Commission, 412 F.2d 740 (3rd Cir., 1969).

here, has continued to suspend all other major rate increases under both the Natural Gas and Federal Power Acts for the full five months period authorized by the respective statutes. See Wisconsin Electric Power Company, Docket No. E-7546, Order of July 21, 1970 (Federal Power Act); and, e.g., Northern Natural Gas Company, Docket No. RP70-43, Order of July 22, 1970 (Natural Gas Act).

Despite the clear discrimination, the Commission made no effort to distinguish the present situation. Although Commissioner Carver dissented on this very point, the Commission's Order of April 29, 1970 (R. 580-593) sets forth no reason whatsoever for its aberrational action. And in its Order of May 26, 1970 denying the Reading and Wakefield Motion for Emergency Amendment of the early order seeking to enlarge the suspension period for at least the period of time required to permit Boston Edison's wholesale customers to take essential protective action, the Commission again makes no attempt to show why the present case differs from all of the other rate increase cases in which it suspended increases for five months. All it says is that "the public

interest is best served by our determination to suspend the rates for one day" because any "relaxation" of the one day suspension would result in irreparable injury to Boston Edison, whereas its customers will receive refunds with interest to the extent that the increased rates are found to be unjustified. (R. 710; see also R. 736 (Order Denying Reading and Wakefield Application for Re-hearing)). Whatever merit this position might have had as a rationale for establishing a new policy governing the period for which major rate increases will normally be suspended, <sup>3/</sup> it does not

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3/ As Reading and Wakefield point out in their brief (p. 60), the Supreme Court has made clear that the availability of refunds is not an adequate protection to a wholesale purchaser. See F.P.C. v. Tennessee Gas Transmission Co., 371 U.S. 145; F.P.C. v. Hunt, 376 U.S. 515. If Congress had not recognized this inadequacy, there would have been no need to provide for a five months suspension (a compromise between the interests of seller and buyer).

Moreover, pursuant to the Commission's decision in Texas Eastern Transmission Corp., 39 F.P.C. 630, aff'd, Texas Eastern Transmission Corp. v. F.P.C., 414 F.2d 344 (5th Cir. 1969) cert. denied, 26 L. Ed. 2d 89 (1970), a distributor is not entitled to keep any such refunds and can protect itself only by filing a tracking increase. But the unexpected one day suspension made it impossible for Boston Edison's wholesale customers to take such action for a period of time. The fact that tracking increases could not, under the circumstances, be made effective for a significant period after Boston Edison's new rates became effective, had been pointed out to the Commission by Boston Gas, among others, in seeking at least some enlargement of the suspension period.

justify special discriminatory action here. On the contrary, this statement obviously is equally applicable to all the other rate increases, before and after the Boston Edison filing here in issue, where the Commission suspended rate increases for the full five months term.

2. The arbitrary and discriminatory nature of the Commission's action is highlighted by the fact that it was admittedly in violation of Section 35.13(b)4(i) of the Commission's Regulations under the Federal Power Act, 18 C.F.R. Sec. 35.13(b)4(i). This rule provides that in the case of rate increases the utility file its "cost of service according to supporting statements A through O" as set forth in the rule "60 days prior to the date that such changed rate is proposed to become effective." Edison, as the Commission itself pointed out (R. 581), did not complete its filing until March 30, 1970. Thus, even if the rate increase had been accepted for filing without suspension, it could not, under the Rule, have become effective until May 31, 1970 -- a month after the expiration of the one day suspension date.

When this was pointed out in the Commission, its response was to claim that it had consciously, albeit silently, waived the

rule in taking its previous action (R. 711). We can, for purposes of this case, accept the Commission's own description of its action, (but see Commissioner Carver's dissent on this point at R. 712). For it is clear that the Commission may not, without following the procedures specified in its Rules of Practice and Procedure, waive other portions of its rules to the detriment of an interested party. If Boston Edison had in fact sought a waiver of the rule, it would have been required, pursuant to the express language of Section 1.7(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 1.7(b), to file a petition for waiver with the Commission, setting forth clearly and concisely the specific rule sought to be waived and "the purpose of, and the facts claimed to contribute the grounds regarding, such ... waiver." Boston Edison made no attempt to do so, undoubtedly because Section 1.7(b) also provides that "[i]f a rate filing is accompanied by a request for waiver pursuant to this section, the thirty day notice period provided in ... section 205(d) of the Federal Power Act shall begin to run if and when the Commission grants the request."

3. In view of its embarrassing position on the merits of this issue, the Commission can be expected to fall back upon the position

that any action it takes in suspending or not suspending a rate is unreviewable, or perhaps even on an argument that its suspension order is not final reviewable action. Neither such contention has any validity.

The Commission's statement that its suspension order "is not an appealable order under Section 313 of the Federal Power Act" (R. 709, n. 1), is clearly not correct in terms of anything expressly stated in that section, which authorizes an appeal by a party to a proceeding under the Act who is "aggrieved by an order issued by the Commission in such proceeding." While the courts have added, by way of gloss, that an appealable order must have the requisite degree of finality, it has never been suggested that a final order for purposes of review must be "the" final order in a proceeding. On the contrary, this court has held that a party denied intervention by a Commission order under the analogous provisions of the Natural Gas Act must appeal therefrom and cannot await the Commission's decision on the merits of the proceeding. Public Service Commission of New York v. F.P.C., 109 U.S. App. D.C. 289, 284 F.2d 200 (1960). Specifically, the courts have held that

an immediate appeal can be taken from a decision suspending a rate filing by a purchaser claiming that the Commission should instead have rejected the filing. See Memphis Light, Gas & Water Div. v. F.P.C., 102 U.S. App. D.C. 77, 250 F.2d 402, 404-405 (1957), reversed on other grounds, sub nom., 358 U.S. 103 (1958), Tyler Gas Service Co. v. F.P.C., 101 U.S. App. D.C. 184, 247 F.2d 590 (1957); Mobile Gas Service Corp. v. F.P.C., 215 F.2d 883, 885 (3rd Cir., 1954), aff'd, sub nom., 350 U.S. 332 (1956).

It is true that the courts have normally been reluctant to pass upon the question of whether an agency abused its discretion in suspending or refusing to suspend a rate filing; any such determination, it has been suggested, "would seem to require at least some consideration of the applicant's claim that the carrier's proposed rates are unreasonable," Arrow Transportation Company v. Southern Railway Co., 372 U.S. 658, 670.<sup>4/</sup> But, as the Supreme Court noted without disapproval in Arrow, even in this situation the courts have

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4/ As the Reading and Wakefield brief points out (p. 53, n. 35), the holding of the Arrow case, supra, is only that federal courts have no independent equity authority to enjoin rate filings, not that they cannot review the Commission's action with respect thereto.

not hesitated to step into set aside agency action, which, after initially suspending a rate, allowed it to go into effect on reconsideration without any real explanation for reversal of position. See, in addition to the cases cited at p. 51 of the Reading and Wakefield Brief, Atlantic Coast Line R. R. Co. v. United States, 173 F. Supp. 871 (D. C. S. D. Va., 1958).

Under the Natural Gas and Federal Power Acts there is no private reparations remedy, such as exists under the Interstate Commerce Act, which is available to a customer of a natural gas company or utility, where the Commission chooses not to suspend a rate increase. Under these circumstances, it would appear that there would be considerably less basis for judicial self-restraint in passing on the reasonableness of the Commission's action than in the railroad cases in which the issue has previously arisen. But in any event, no such intrusion into any area arguably left to the discretion of the agency is involved here. If the Commission had been able to give reasons why a one day suspension was appropriate here in contrast to all of the situations before and after where it suspended similar rate increases for a full five months, the court

might be reluctant to intervene, unless the stated basis for distinguishing the present case was clearly arbitrary or unreasonable. But here, where the Commission has made no effort to show why it has treated this case differently from all others, action by the court to set the Commission's action aside is clearly consistent with its normal statutory review functions.

Accordingly, Boston Gas believes that the court should, as a minimum, set aside the Commission's Order, insofar as it limited the suspension of Boston Edison's instant rate increase to a single day, with instructions to provide for a five months suspension thereof consistent with its holding in analogous situations.

Respectfully submitted,

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